Public Utilities

FORTNIGHTLY

March 28, 1946

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PUBLISHERS

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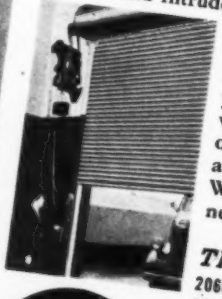

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Public Utilities Fortnightly

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Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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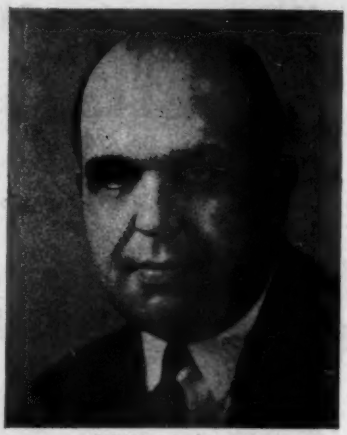
Pages with the Editors

EARLIER this year one of the most respected leaders of the public utility industry created a minor stir when he stated that he did not believe anyone in the electric power industry regretted the transition, in the past twenty years, from a value basis to a cost basis for purposes of rate regulation. The speaker was Samuel Ferguson, president of the Hartford Electric Light Company, addressing the fourth annual conference of the Technical Valuation Society in New York city on January 14th.

MR. FERGUSON went on to say, however, that a cost basis could be satisfactory to the industry only in the event that it did not involve a so-called "net property" concept. Net property is cost less depreciation. He explained that if rates are based on net property there may be a disastrous result when the rate of growth in the industry slows down. This danger was not recognized originally when the expansion of demand was so rapid that earnings on either a cost or a net property basis assured sufficient return on invested capital.

MR. FERGUSON'S distinction jolts us into consideration of a significant question. Are we now witnessing a slackening of industrial growth in our public utility industries? Is the depreciation reserve, in consequence, increasing faster than the amount that can be invested in plant additions? If so, the result must inevitably be a diminishing return—cutting into dividend disbursements and eventually imperiling bondholders' claims.

OF course, one alternative method of approaching the problem of keeping the growth of depreciation reserve—whether or not it is used as a subtraction from total cost in rate base procedure—



HENRY M. LONG

more in line with the realities of the consumed investment is to limit the statement of the depreciation reserve to the minimum requirement of reasonable age-life estimates. Assuming, as most regulatory bodies do these days, that the depreciation reserve must, in any event, be cast in the mold of the original cost concept, there still remain various methods for accumulating the depreciation reserve, and the difference between methods can amount to quite an astonishing figure.

IN the opening article in this issue, for example, there is described an example of the potential magnitude of what the author calls "miscomputation" in the form of overstating the depreciation reserve. And in an actual case the miscomputation approximated $5,000,000, or 9 per cent of the plant cost. This, obviously, is no mere bagatelle when it comes down to the brass tacks of fixing the rate of return on the cost of property minus the depreciation reserve.

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HENRY M. LONG, author of this article, entitled "Need the 'Straight-line' Reserve Be Excessive?" states quite succinctly: "To the extent that there is an overstatement of the depreciation reserve there is, of course, an understatement of 'net book cost.'" Net book cost is that highly significant amount in modern utility service rate cases which has attracted the criticism of Mr. Ferguson.

EVEN assuming that MR. LONG'S theory of accumulating the depreciation reserve avoids the burdensome overstatement, it still does not directly cope with the problem envisioned by Mr. Ferguson —the problem of coördinating the phases or cycles of growth and maturity in the evolution of the industry's capital requirements from the standpoint of a return which will attract and retain the investor's dollar.

BUT to get back to our article on depreciation *per se*, MR. LONG, its author, is chief of the accounting regulations division of the accounting department of the Federal Communications Commission. Since the institution of that committee several years ago he has been a "guest" (consultant) member of the committee on depreciation of the National Association of Railroad and Utilities Commissioners. While MR. LONG has devoted about twenty-five years, or about half of his life, to the problems of utility accounting regulation, he has found time for a variety of other business experiences, including several years in the construction and operation of public utilities.

SINCE majoring in mathematics to obtain his Bachelor's degree from Franklin and Marshall College, he has had opportunities to witness at close range the application of that science in a variety of fields. He is a member of that fastly growing group that adopts as a hobby—or sometimes even a vocation—the stripping from mathematics of the overemphasis upon its alleged complexities and mysteries.

* * * *

WITH all of the furor over strikes both in and out of the public utility industry, sometimes it seems as if the old-fashioned relationship between wage demands and cost of living has been sidetracked or overshadowed by the newer ideas as to who can afford to pay how much. In this issue (beginning page 415) H. S. PERCIVAL, recently retired from the New York city office of the Long Lines Department of the American Telephone and Telegraph Company, gives us a rather original analysis of the basic relationship between the price of working and the price of living—which, after all, should be, under our system, the foundation of all reasonable labor demands.

* * * *

GEORGE KERR, whose article entitled "Electricity Out of Coal!" begins on page 412, is presently connected with Ebasco Services Incorporated. But his background has been by no means confined to a desk and swivel chair. For many years he was active in promoting customer ownership in various sections of the United States, as well as foreign countries. Prior to that he was engaged in advertising and sales promotion for larger operating utilities.

THE next number of this magazine will be out April 11th.

The Editors

GEORGE KERR

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

CHARLES E. WILSON
President, General Electric Company.

"The best interests of the public demand a full share of responsibility from organized labor."

ROWLAND P. SOULE
Vice president, American Machine & Foundry Company.

". . . we must regain our lost capacity for righteous indignation and view the public morals through sights set far higher than today."

HAROLD E. STASSEN
Former governor of Minnesota.

"The right of business to manage its affairs must be vigorously defended. . . . [But] there must also be an increasing amount of information to labor and the general public of the financial facts of business."

G. W. WILSON
Manager, transportation division, General Electric Company.

"We are now at the point where we must either stop talking and playing around with this traffic problem and really do something about it or face the economic strangulation of the downtown congested areas."

Excerpt from "New England Letter," published by First National Bank of Boston.

"We should formulate our national policy on productivity, which is the true source of purchasing power and which makes possible a balanced budget so that all groups can exchange goods and services for one another."

JOHN E. RANKIN
U. S. Representative from Mississippi.

"We want that system of free enterprise that George Washington and Thomas Jefferson and Benjamin Franklin and James Madison and Abraham Lincoln and Jefferson Davis and every other great statesman of America has stood for."

JOHN C. KNOX
Federal District Court Judge.

"Labor talks loudly of the necessity of preserving 'democracy.' Democracy, it is true, must be preserved. But so long as many labor leaders are autocrats and act without restraints, the democratization of labor is an impossibility."

LELAND OLDS
Chairman, Federal Power Commission.

"In the states where average rainfall is low, the storage of waters for irrigation will be a very important element in these programs. But, as a means of more general distribution of the benefits of modern technology, low-cost electricity as a contribution of river basin development may well provide the key."

DAVID A. SIMMONS
President, American Bar Association.

"The function of the judge is to determine what the law is, and to apply it to the facts in the case before him, and he is no judge but a partisan if he changes either the law or the facts to suit his own notions or those of anybody else."

Excerpt from report of special labor committee of the Twentieth Century Fund.

". . . before collective bargaining can become a tool for industrial self-government, it must be actively affirmed, rather than merely accepted, by business as well as by labor and government as the keystone in all relations between management and workers."

WALTER LIPPMAN
Special writer, New York Herald Tribune.

"Let the captains of industry be captains indeed, and go forward unafraid in the days to come. The men who manage American industry have no reason to feel inferior to government officials, politicians, newspaper editors and reporters, college professors, and labor leaders."

EDITORIAL STATEMENT
Guaranty Survey.

"The theory of compensatory spending has been tried and the results certainly were not such as to encourage the belief that the cure for depression is to be found in government deficits. The most severe and most prolonged economic depression in our history was the only one from which we tried to spend our way out."

HAROLD L. ICKES
Former Secretary of the Interior.

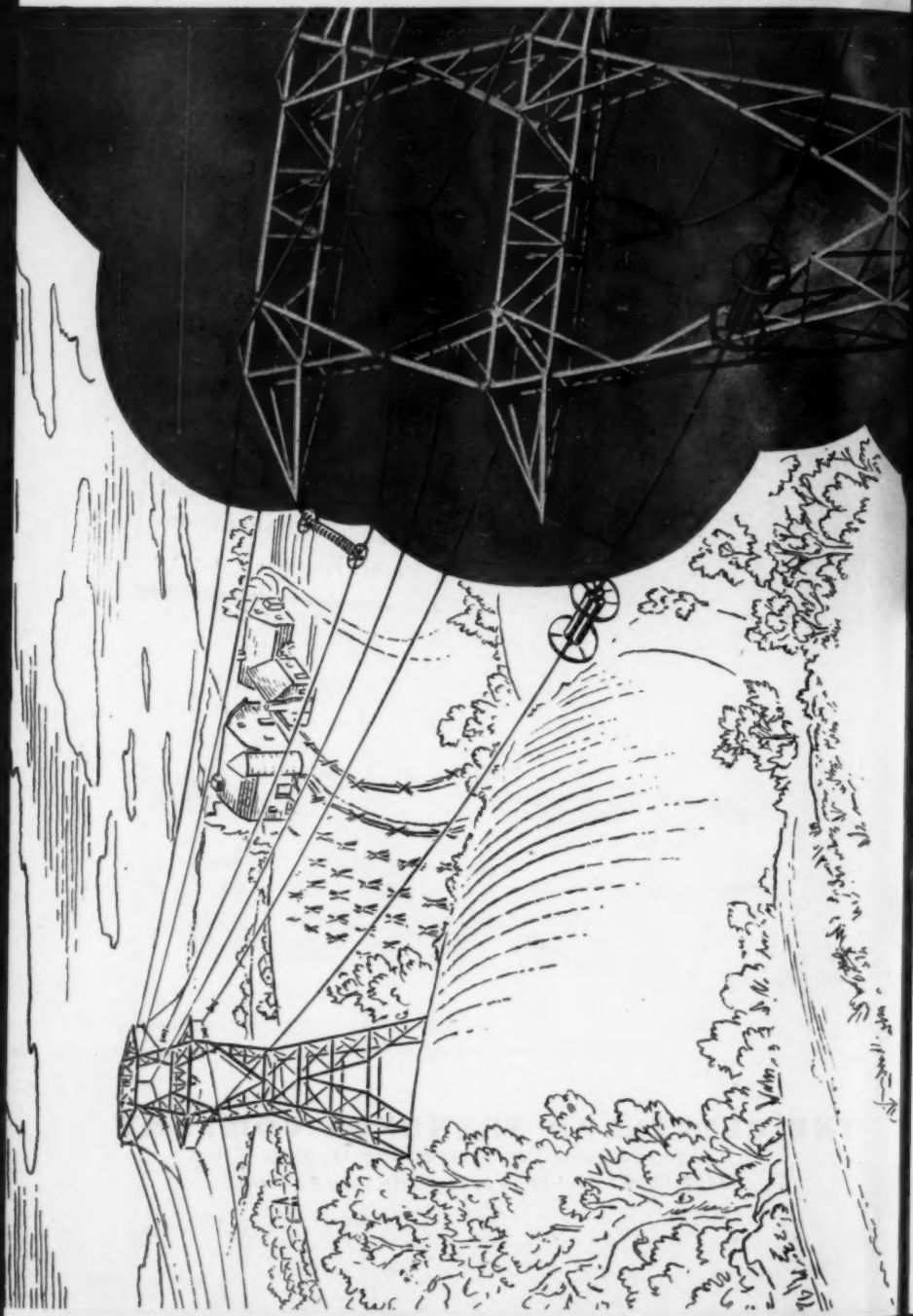
"National interest in any irreplaceable natural resource, particularly petroleum, must be recognized. This does not mean 'nationalization' or 'government competition' or 'government domination.' It does mean that government and industry need to make certain that this nation will always have access, whether at home or abroad, to all of the oil that it may ever require."

JOHN CLIFFORD FOLGER
Former president, Investment Bankers Association.

"For ten years we have cried 'Wolf! Wolf!' Half thinking the Wolf would never come. The plain fact is: Inflation is here. Everybody is grinding his own ax. Capital and business want lower taxes, less restraints, more profits. Labor wants higher wages. Politicians want happy voters. Quick and easy profits are giving investors an unhealthy flush. There is danger in this situation."

RAYMOND E. WILLIS
U. S. Senator from Indiana.

"It is unthinkable that, in such a land, the common services which have come to be a vital part of everyday necessity and safety, such as elevator service, streetcar transportation, food-distributing agencies, utilities which supply light and heat and telephones—all of which involve the lives of innocent men, women, and babies—should be interrupted while grievances of infinitely lesser importance are being debated by those who profit from their operation."



Utilities Almanack

March

28	Th	¶ *American Water Works Association, New York Section, starts meeting Elmira, N. Y., 1946.*
29	F	¶ *Iowa Independent Telephone Association will hold annual convention, Des Moines, Iowa, Apr. 11, 12, 1946.*
30	Sa	¶ *American Gas Association, Conference on Industrial and Commercial Gas, convenes, Toledo, Ohio, 1946.*
31	S	¶ *American Institute of Electrical Engineers will hold meeting, Buffalo, N. Y., Apr. 24, 25, 1946.*

April

1	M	¶ *Gas and Electric Industry Accountants start meeting, Cincinnati, Ohio, 1946.*
2	Tu	¶ *Federal Power Commission resumes natural gas investigation hearing, Charleston, W. Va., 1946.*
3	W	¶ *American Water Works Association, Indiana Section, ends meeting, Indianapolis, Ind., 1946.*
4	Th	¶ *Kentucky Telephone Association session starts, 1946.*
5	F	¶ *Midwest Power Conference concludes meeting, Chicago, Ill., 1946.*
6	Sa	¶ *Southeastern Electric Exchange annual conference will be held, Edgewater Park, Miss., Apr. 24-26, 1946.*
7	S	¶ *International Lighting Exposition will be held, Chicago, Ill., Apr. 26-30, 1946.*
8	M	¶ *American Water Works Association, Canadian Section, starts meeting, Niagara Falls, Ont., 1946.*
9	Tu	¶ *Nebraska Telephone Association begins convention, Omaha, Neb., 1946.*
10	W	¶ *Mid-West Gas Association meeting ends, St. Paul, Minn., 1946.*

Courtesy of A.C.A. Galleries *Elsie Hafner, N. Y.*

Mining Town

By Tromka

Public Utilities
FORTNIGHTLY

VOL. XXXVII, No. 7 MARCH 28, 1946

Need the "Straight-line" Reserve Be Excessive?

There is a tendency, particularly on the part of the uninitiated, to assume that straight-line depreciation reserve requirements amount to considerably more than is really necessary. Here is an explanation of how the reserve requirements can properly be kept within reasonable limits—avoiding excessive accruals.

BY HENRY M. LONG

THIS article is neither a defense nor a criticism of the straight-line depreciation plan, as distinguished from the sinking fund or any other depreciation plan. It is merely an attempt to show that utility executives who are contemplating the adoption of straight-line depreciation, either voluntarily or because of regulatory requirements, are too often unduly alarmed by the popularly supposed size of reserves called for under the plan. In other words, this article (which, incidentally, represents the personal opinion of the author on any point which might be regarded as controversial) is an effort to translate into lay language certain mathematical principles which have been widely accepted for some years by regulatory bodies and public utilities which have extensively applied straight-line depreciation accounting.

Further, the author hopes to demonstrate that the true straight-line reserve requirement is usually substantially less than the amount that will be computed by the uninitiated. This is so, even when the same service lives, salvage factors, and consequent depreciation rates underlie both computations. It is important to remember this: *To*

the degree that there is an overstatement of the depreciation reserve there is, of course, an understatement of "net book cost" (plant cost less depreciation reserve). Net book cost is that highly significant amount in modern utility service rate cases.

An example of the potential magnitude of miscomputation in this respect appears in the table inset into Chart A at page 409. There, in an actual case, the miscomputation approximated $5,000,000 or 9 per cent of plant cost.

Misunderstanding of this subject is largely attributable to a natural inclination to associate with the term "straight line" a computation so simple as to prove irrational in the light of thorough analysis. This does not mean that the accepted rational procedure is so complex as not to be readily understandable to the average reader of this publication. But it does require, perhaps, a reasonable effort towards simplified presentation.

On the other hand, attempts to apply unduly simplified processes (to determine the amount of the reserve requirement and of annual charges to depreciation expense under the straight-line method) almost invariably display their impact in the form of overstated reserves and expenses largely in proportion to the presence of plant facilities of the "mass" or groupable type. Examples include the several elements of overhead and underground transmission and distribution systems, as well as many items of inside plant on the premises of both the customers and the utilities. Even where the concept of "large single units" prevails, as is the case with hydroelectric plants, due consideration of the "mortality pattern" of eventual piecemeal retirements of large homogeneous sections of plant may have an appreciable effect upon the amount accounted for as depreciation.

To get down to cases on this state of popular misconception of straight-line depreciation reserve requirements, let us examine, first, three fallacies into which an average intelligent and well-meaning utility operator is likely to fall when he tries to familiarize himself with the "group-plan" concept of straight-line depreciation. He may conclude:

1. That the subject is so complicated that only advanced mathematicians can understand it.
2. That, over the long run, the "group plan" comes out with about the same results as the "unit plan" or other plans (which could only be true in the highly unlikely situation of a plant eventually retired completely at predetermined dates).
3. That, if the "group plan" indicates a lower reserve requirement, then there must be some trick to it—probably an improper one.

These conclusions are all wrong, as we shall presently see. Let us proceed to a simplified (and thereby somewhat exaggerated) hypothetical example. Its purpose is to show that when depreciation reserve requirements are attempted to be compiled on the simple ratio of age to life of surviving property units, we get an excessive result.[1]

Also, for purposes of simplicity, we

[1] Ultra mathematical computations are excluded here in the interest of simplified presentation, but have been prepared by the author for more elaborate treatment of the subject at a subsequent date. Also, it shall be kept in mind that each reference to, and criticism of, age-life requirements shall be construed as suggesting the inadequate modification of simple ratio age-life reserve requirements. It is not intended to criticize the broad concept of age life, as such.

shall confine this discussion to a single group of property units, rather than to a succession of groups due to expansion or replacement. Bear in mind, however, that the principles set forth are applicable to such successions. This is because the aggregate reserve requirement for a complete plant is the *composite* requirement for numerous groups in various stages of useful life progression, just as much as if there were only one group of a single "vintage" or "birthday."

LET us assume then that we have three power line poles all installed new on January 1, 1941, each costing the rather liberal unit price of $100. Let us assume further that (salvage in the case of worn-out poles being zero) our perfect power of prophecy tells us that pole A will last one year, pole B will last two years, and pole C will last three years.

Now, so far, our mental arithmetic tells us that the average life of the three poles is two years and that the depreciation rate, viewed from the standpoint of the average of the group, would be 50 per cent per year.

WE arrived at these conclusions easily enough by mental arithmetic. Yet, in order to demonstrate the generally pursued method of determining depreciation rates under the group plan, in Table I, is the somewhat more complex but more realistic formal compu-

TABLE I

RATE DEVELOPMENT—GROUP PLAN

Unit Designation	*Book Cost*	*Years Book Cost Carried In Plant Account*	*Dollar-years—Equivalent of Dollars Carried One Year in Plant Account, (b) Times (c)*
(a)	(b)	(c)	(d)
A	$100	1	$100
B	100	2	200
C	100	3	300
Totals	$300		$600

(e) Total of depreciation accruals (same as total book cost, in absence of net salvage): $300

$$\text{Annual rate} = \frac{\text{Total accruals}}{\text{(Equivalent of) dollars carried one year in plant account}} = \frac{\text{(e)}}{\text{Total of (d)}} = \frac{300}{600} = .50$$

or

(to indicate the exact alternate methods of many companies)

$$\text{Average service life} = \frac{\text{Dollar-years lived}}{\text{Dollars living various portions of these dollar-years}} = \frac{\text{Total of (d)}}{\text{Total of (b)}} = \frac{600}{300} = 2$$

$$\text{Rate} = \frac{1 - \text{Salvage factor}}{\text{Average service life}} = \frac{1 \text{ \& } 0}{2} = .50$$

tation which actually lies behind our mental arithmetic.[2]

Having determined an annual depreciation accrual rate of 50 per cent, let us indicate in Table II (page 403), in condensed form, how the depreciation reserve account would be maintained during the life of the three units.

Next, let us consider what the "unit-basis" computation will get us for the same situation—according to this latter ratio of age to life. On January 1, 1942, the day after pole A has been retired, we would still have, according to unit-basis concept, a total remaining life expectancy of three years for both pole B and pole C, plus one year's age already accrued for each. (Remember pole A is already retired.) That makes a sum of five years for the two surviving poles, which gives us an average of two and one-half years for each, or an age-life ratio of 40 per cent.[3] Contrast this with the 25 per cent reserve ratio obtained under the group plan.

THE uninitiated are likely to jump to a false conclusion at this point, that the wide disparity of 15 per cent in the two reserve-requirement ratios (25 per cent figured on the group basis and 40 per cent on the unit basis) indicates some inherent fault in the group plan. But those advocates of the group-plan depreciation accounting base their justification on what might be called simply the "service-capacity" theory.

Nobody in his right mind, for example, would buy a utility plant erected in the middle of the Sahara, where its public service function would be useless. This, regardless of the actual cost of the units making up the plant. The obvious reason is that the "service capacity" of such a plant would be zero.

Viewed in this light, what the utility company buys, and what is later consumed or depreciated, is not so many dollars' worth of poles, but so many dollars' worth of useful service from these poles. Nobody could have actually said in advance, of course, just what service capacity each pole would experience when they were all installed. But, according to this standard, the total of $300 spent for poles A, B, and C would give pole A a "service-capacity" value of only $50, pole B $100, and pole C $150—although each pole had the uniform $100 conventional cost.

Of course, the alert reader will object, at this point, that we could no longer apply our rate of 50 per cent depreciation a year if we attempted to *depreciate* on the basis of "service capacity" exhausted. Followed to its extreme and unjustified conclusion, this would involve the retirement of an investment of only $50 for pole A the first year, $100 for pole B the second year, and $150 for pole C the third year. In actual practice, of course, such an unjustifiable procedure would be tremendously complicated by factors not present in our little simplified example. The blunt fact that service life and mortality patterns are not precisely predictable, the salvage factor, and so forth, would make any such setup an accountant's nightmare.

[2] In actual practice, reserve-requirement ratio for grouped plant is usually developed by a formula. This formula appears at the top of page 226 (designation "14.4") of the 1943 report of the committee on depreciation of the National Association of Railroad and Utilities Commissioners. A proper application of the formula to the foregoing hypothetical case would produce the same reserve-requirement ratio that appears in Table II—25 per cent.

[3] As in Table I, the alternative can be worked out in "dollar-years lived," giving the same resulting age-life ratio; namely, 40 per cent.

TABLE II

RESERVE LEDGER PAGE—GROUP PLAN

Depreciation Reserve

		DR			*CR*
1941			*1941*		
Dec. 31	Retirement—Unit A	$100	Jan. to Dec.	Accruals (.50 x 300)	$150
Dec. 31	Balance (CR)	50			
		$150			$150
1942			*1942*		
Dec. 31	Retirement—Unit B	$100	Jan. 1	Balance	$ 50
Dec. 31	Balance (CR)	50	Jan. to Dec.	Accruals (.50 x 200)	100
		$150			$150
1943			*1943*		
Dec. 31	Retirement—Unit C	$100	Jan. 1	Balance	$ 50
Dec. 31	Balance	0	Jan. to Dec.	Accruals (.50 x 100)	50
		$100			$100

As we are assuming, to avoid complications, that all estimates prove correct, the reserve-requirement ratio of, say, January 1, 1942, may be taken directly from the accounts, as follows:

Balance in depreciation reserve		$ 50
Balance in plant account		$200
Reserve-requirement ratio	$\frac{50}{200} = .25$ or	25%

THERE are at least two outstanding reasons why the principles of the group plan can be pursued in practice without even thinking of introducing such unorthodox plant accounting:

A. Net book cost[4] (a very significant item when accounts are referred to in connection with utility rate cases) remains unchanged by a "retirement entry" irrespective of the amount of the entry because the same amount, whatever it may be, is deducted from the balance in the depreciation reserve that is deducted from the plant account.[5]

B. The accruals appropriate under the group-plan philosophy in each year of the over-all service life of the group can be determined without resorting to the unconventional plant accounting.

Fortunately, the same objective of making the annual charges to depreciation expense consistent with the group-plan philosophy *can be attained by the*

[4] Plant account balance minus depreciation reserve balance.

[5] It is proper to assume that the amount of net salvage to be credited to the reserve is fixed, irrespective of the plan of depreciation and retirement accounting.

application to conventional plant costs of a uniform rate, such as the rate of 50 per cent (developed in Table I). We did not hand pick some figures in support of this general statement. This short road to the goal is available regardless of the magnitude or variety of the costs of the individual plant units subject to grouping and irrespective of the pattern of "mortality dispersion." The truth of this general statement is subject to algebraic demonstration but it can also be demonstrated less formally.

LET it be assumed that in a more elaborate case there has been developed (as was done in Table I) a uniform annual rate of 5 per cent. Let us also assume that two units of the group cost $50 each and had respective lives of eighteen years and twenty-one years. With respect to the first unit, its cost of $50 would remain in the plant account (depreciation base) for eighteen years so that the resulting aggregate charges to depreciation expense (amortized service-capacity cost) with respect to that unit would be 18 x .05 x $50 = $45. In the case of the second unit the aggregate charges to depreciation would be 21 x .05 x $50 = $52.50. These amounts of $45 and $52.50 are in the proportion of 18 to 21 or in the proportion of the respective service lives (*i.e.*, under the straight-line concept—in proportion to their service capacities).

This was the goal sought, for when we have—under a process that eventually disposes of the entire cost of the group—amortized with respect to units amounts proportional to their service capacities, we have amortized their respective service-capacity costs.

SIMILARLY, in the cases of two other units of the same group, costing $55 each, the respective service lives may have been seventeen years and twenty-two years. The respective aggregate charges to depreciation expense would be 17 x .05 x $55 = $46.75 and 22 x .05 x $55 = $60.50. These amounts of $46.75 and $60.50 are in proportion to the respective service lives of seventeen years and twenty-two years.

It is not necessary, however, that any two units of the group have the same cost. *The general concept is not destroyed as long as, for each dollar of conventional book cost comprised by the group, there is an aggregate amortizing through charges to depreciation expense proportional, in contrast with other similar amortizings, to the service life (service capacity) of the unit with which that particular dollar of conventional book cost is associable.* Putting it another way, there is implicitly associable with every dollar of conventional book cost of justifiably grouped plant an amount of so many cents (less than, equal to, or greater than 100) representing a part of the properly weighted service-capacity cost of the unit with which that dollar is associable.

Incidentally, note what the reserve-requirement ratio (as of January 1, 1942) would have been, in our little simplified example, if plant accounts had actually been kept on the impractical basis of strict service-capacity costs: The balance in the plant account would be $250. The reserve would be $100 (the 1941 accrual of $150, less $50 retirement). This would leave a reserve-requirement ratio of 100 to 250, or 40 per cent.

But 40 per cent was the reserve-requirement ratio under our "unit-basis" computation of age-life ratio! Is this accidental? Not at all. What we have done here is to reconcile, in a sense, age-life method with conventional group-plan method of determining reserve requirement. The "unit-basis" method for group plant would be correct if plant accounts were kept on the basis of true "service-capacity" costs. But plant accounts are not so kept. They are kept in a conventional manner that necessitates conventional computation of the reserve-requirement ratio.

So far we have compared the group plan with the age-life ratio unit basis, considering the "service-capacity" factor. Let us now turn to a third plan for purposes of enriching our comparison and testing our results. It is called the "unit-summation" plan. It is supported by those who feel that the group plan (as exemplified above and traditionally pursued) is fundamentally defective.

Under the "unit-summation" plan, a new rate is applied each year to the book cost of remaining units of the property group. This is done in such a way as to produce a total annual "accrual" equal to a "summation" of accruals at that year *applicable to each individual unit in the group.* The annual depreciation for each unit (when the straight-line method is used) is obtained by apportioning equal instalments of its years of estimated service life.

Table III, below, shows how the unit-summation plan would work out with our simplified example.

Add the total accruals (for A, B, and C) in Table III for each year and it gives us $183.33 for 1941, $83.33 for 1942, and $33.34 for 1943. Corresponding annual depreciation rates would be: 61.11 per cent (1941); 41.67 per cent (1942); 33.34 per cent (1943).

It is apparent that our "unit-summation" plan gives us an even higher reserve-requirement ratio as of January 1, 1942—namely, 41.67 per cent[6]—than our "unit-basis" age-life ratio of 40 per cent. It will be seen that the "unit-summation" plan develops *unnecessarily* (and, in this writer's opinion, *improperly*) a regressive series of rates when the application of the uniform rate of 50 per cent to the traditional sort of plant account balances

[6] The 41.67 per cent ratio is derived from dividing the reserve balance, less retirement charge, as of that date ($83.33) by the plant account ($200).

TABLE III

RATE DEVELOPMENT—UNIT-SUMMATION PLAN

Unit Designation	*Conventional Book Cost*	*"Accruals" Charged to Depreciation Expense And Credited to Depreciation Reserve*		
		1941	*1942*	*1943*
A	$100	$100	$	$
B	100	50	50	
C	100	33.33	33.33	33.34
	$300	$183.33	$83.33	$33.34

produces the same result as does the more laborious process, without an unjustified prematurity in the earlier annual scheduling of dollar accruals.

THERE are certain classes of plant (buildings usually constituting an example) to which the application of the unit-summation plan may be regarded as somewhat more logical. Two buildings may have the same floor space and serve largely the same functions. But the one of frame construction will presumably have a shorter life than the one of brick construction and their respective conventionally recorded costs will be in somewhat the same proportion as that of their service lives. Thus, when service life is a function of material quality, the conventional book costs tend largely to reflect the true service-capacity costs.

This is in sharp contrast with mass or logically groupable plant, consisting of numerous identical or extensively similar units which the constructor or supplier strives to the best of his ability to make equally durable (and thus about equally priced) but which unavoidably contain latently, because of a variety of local conditions, varying degrees of service capacity.

Some companies appear superficially to be pursuing the group plan with respect to such plant as buildings. When there is not much activity in the plant account, there is no appreciable change in the single depreciation rate applied to the book cost of all buildings. This tends to strengthen the impression that the group plan is being pursued. Analysis will often reveal, however, that the unit-summation plan (or in a sense a sort of individual unit plan) is in force. The life of each building is estimated and the resulting rate and amount of annual accrual is then determined for each building. By compositing these rates (taking the ratio of the sum of the thus computed accruals to the total book cost of all buildings) a single depreciation rate is developed.

THE reader may by now be left with the impression that in attempting to demonstrate the excessiveness of an age-life reserve requirement for group properties there has been a far digression into the subject of the inapplicability of the unit-summation plan to "mass plant." The treatment of the last-named subject was, however, undertaken advisedly because of the close interrelationship among the three types of reserve-requirement computation: (1) group plan, (2) age-life or unit basis, and (3) unit-summation. The second (age-life method of computation), as applied to grouped plant, is in fact a hybrid. If that term is repulsive, it is, as may be shown by graphic presentation of the course of its magnitude during the life of a group of units, the resultant of the force of the unit-summation plan that pulls the balance in the reserve upward and the force of the conventional group plan that pulls that balance downward to its proper level. (See Chart A, page 409.)

Let us now venture a comparison in Table IV (page 407) of all three plans discussed from the practical standpoint of annual reserve requirement—still using our example of the three poles.

If these figures on the annual amount of reserve requirement were plotted, for purposes of more graphic comparison, on a chart for progressive years,

TABLE IV

RESERVE-REQUIREMENT COMPUTATIONS

Plant account balances are in terms of conventional book cost

	Jan. 1, 1941	*Jan. 1, 1942*	*Jan. 1, 1943*	*Dec. 31, 1943 (Before last retirement)*
a. *Plant account balance (all computations)*	$300	$200	$100	$100
b. *Reserve-requirement ratio (expressed as a percentage)*				
Unit-summation computation	0	41⅔%	66⅔%	100%
Age-life (of survivors) computation	0	40%	66⅔%	100%
Group-plan computation	0	25%	50%	100%
c. *Reserve balance*				
Unit-summation computation	0	$ 83.33	$ 66.67	$100
Age-life (of survivors) computation	0	80.00	66.67	100
Group-plan computation	0	50.00	50.00	100

the following characteristics would become apparent:

1. The unit-summation curve would be in the uppermost position.
2. The group-plan curve would be in the lowest position.
3. The age-life curve would be intermediate when not coincident with one of the other curves.
4. The age-life curve would (a) separate from the group-plan curve immediately upon the first retirement, and (b) join the unit-summation curve after the next-to-last retirement.

THE reason for this behavior of the charted curves is simply this: The group plan falls below unit summation in the early stage because earlier book retirements are not fully provided for, but later on group-plan retirements will have (in terms of "accruals" associated with particular units) *more* than the amounts of subsequent associated book cost retirements. After starting off together, these two curves do not rejoin again until the moment preceding the retirement of the longest-lived units of the group.

Notice, for instance, in Table IV how the retirement of $100 for pole A against its own reserve provision of

$50 for 1941 left a balance of only $50 under the group plan. But with respect to poles B and C, reviewing the situation as of January 1, 1942, the group-plan accrual would amount to $100, as compared with $83.33 under the unit-summation plan—or $16.67 more under the former.

So far we have relied upon retirement accounting to explain the superior position of the unit-summation curve. This curve will also always be found above the group-plan curve within the limits of zero age to date of first retirement. This is because during this period the unit-summation rate applicable to the entire cost of the group *must* be higher than the average rate of the group plan applicable to the same base. As a result the accumulation in the reserve is, of course, also higher under the unit-summation plan.

But why "must" the unit-summation ratio be higher during this period? Does not the unit-summation plan increase the average rate of the group plan for the shorter-lived units and decrease that rate for the longer-lived units—and are not these increases and decreases equalizing in their effect? They are equalizing in their ultimate effect of "total accruals produced," but there is a net increase in rates and "accruals" under the unit-summation plan that prevails at least to the date of first retirement. This is due to a sort of process of compression that we shall explain by example.

THE charts A1, A2, and A3 can be visualized as three different arrangements of three strips of paper, each representing a year's accrual for the years 1941-3, under the group plan, the unit-summation, and a direct superimposed comparison of the two plans. In Chart A-1 we have the group-plan setup; our strips are all one inch wide. But one strip representing 1941 is 1½ inches long (composed of three

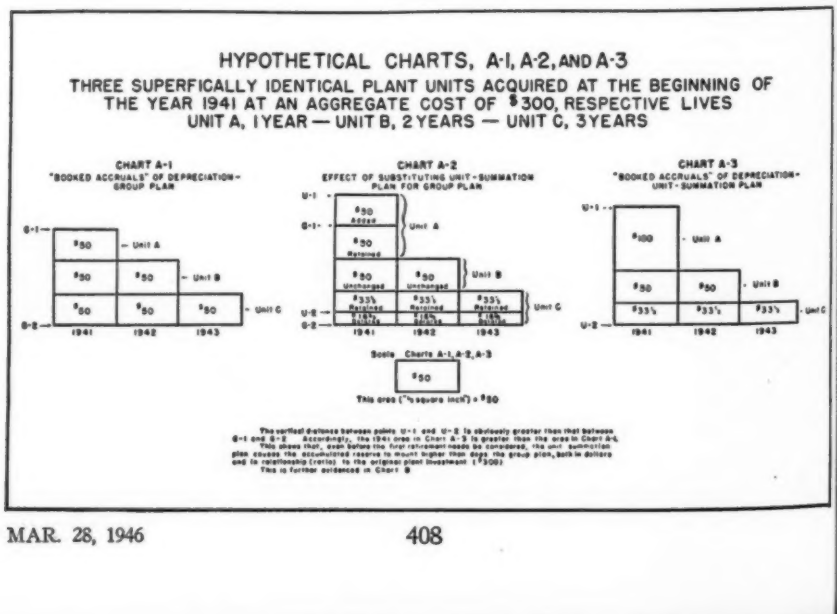
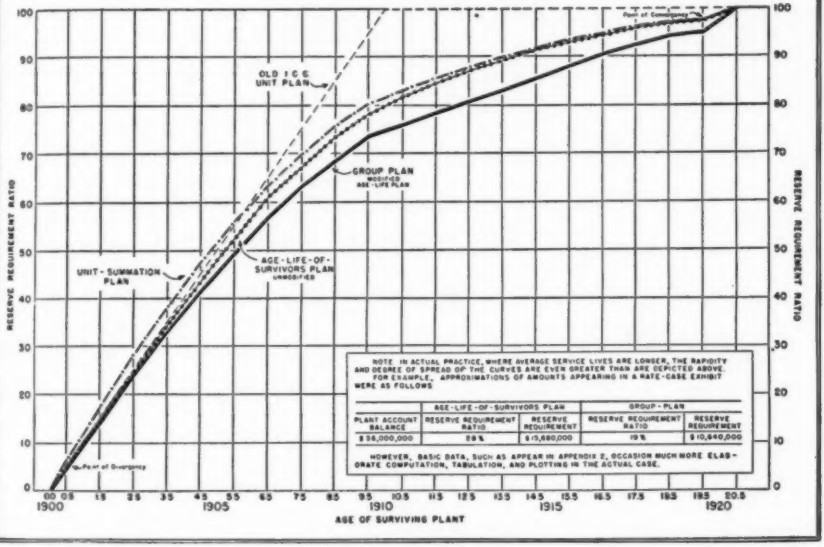


CHART A

DEPRECIATION RESERVE-REQUIREMENT RATIO ACCORDING TO SUCCESSIVE YEARS OF LIFE OF SURVIVORS UNDER THE FOUR METHODS DESCRIBED IN THE TEXT



NOTE: IN ACTUAL PRACTICE, WHERE AVERAGE SERVICE LIVES ARE LONGER, THE RAPIDITY AND DEGREE OF SPREAD OF THE CURVES ARE EVEN GREATER THAN ARE DEPICTED ABOVE. FOR EXAMPLE, APPROXIMATIONS OF AMOUNTS APPEARING IN A RATE-CASE EXHIBIT WERE AS FOLLOWS

	AGE-LIFE-OF-SURVIVORS PLAN		GROUP PLAN	
PLANT ACCOUNT BALANCE	RESERVE REQUIREMENT RATIO	RESERVE REQUIREMENT	RESERVE REQUIREMENT RATIO	RESERVE REQUIREMENT
$36,000,000	28%	$10,080,000	19%	$6,840,000

HOWEVER, BASIC DATA, SUCH AS APPEAR IN APPENDIX 2, OCCASION MUCH MORE ELABORATE COMPUTATION, TABULATION, AND PLOTTING IN THE ACTUAL CASE.

one-half inch blocks for poles A, B, and C). The next strip (1942) is an inch long (composed of two blocks for poles B and C). The third strip (1943) is a single half-inch block (pole C). Total area is three square inches. At $100 an inch, this area totals $300 with $50 assigned to each one-half inch block.

Look what happens when we shift to our unit-summation plan (Chart A-3). We cannot change the total area ($300) but we change the length of our strips so as to accrue more for the first year ($183.33), less for the last year ($33.33), and less for the second year ($83.33).

Note how the accruals associated with each unit have been changed with respect to yearly progression as evidenced by the distorted blocks. The middle figure (Chart A-2) shows the exact differences in annual additions and subtraction of accruals under the two plans, respectively.

The important point proved by *any such* rearrangement of strips is that there must be a compression to the left resulting in more being added to the first or leftmost strip than is deleted therefrom when converting to a unit-summation plan. This proves that that plan will produce greater accruals (higher curve) than does the group plan in the period prior to the first retirement; *i.e.*, the period represented by the leftmost strip.

LET us go back now to the intermediate or age-life curve on Chart A.

The unit-summation curve tends to pull this middle curve up because *both these curves are predicated upon the assumption that there is no influence exerted upon the balance in the reserve by the units which have been retired.* Before the first retirement the unit-summation has no influence on the age-life curve. The latter remains coincident with the group-plan curve at this stage.

Next, the group-plan curve tends to pull the age-life curve downward because *both these curves are predicated upon the assumption that the reserve has been built up and will continue to be built up by the application of average rates.* But the age-life curve is only "halfhearted" in this respect, applying it only to the average life of survivors after the first retirement, whereas the group plan applies this assumption to the average life of *all of the original members of the group.* This is another reason why these two curves are coincident before the first retirement; *i.e.,* because the "original members" and the "survivors" are identical.

After the penultimate retirement the age-life curve coincides with the unit-summation curve because with respect to the last unit the average-life and individual-life concepts as to surviving units automatically become identical.

It follows from this comparison that if a reserve requirement is excessive on the unit-summation basis (because of its failure to recognize proper apportionment of book cost on the basis of service capacity), then the age-life computation must also be in excess, although to a lesser degree (developing after the first retirement). It would further appear that the age-life-of-survivors computation is neither fish nor fowl, but a vacillating, if not eccentric, compromise between the two.[7]

PASSING notice should also be directed toward one more plan of determining reserve requirement under the straight-line method. It is usually called the "old ICC unit plan," because it was prescribed in the Interstate Commerce Commission accounting regulation for steam railroads and other carriers until a fairly recent substitution of the group plan in most cases. For comparative purposes, this "old ICC unit plan" has been projected on our Chart A. (See page 409.)

This old ICC plan was based on the average life of the units of a simultaneously acquired group. That part of a particular unit cost (not represented by salvage or by "booked accrual" to a date of retirement prior to the expiration of the average life of the group) is charged at retirement to a special account designated as retirement expense.

After average life has been reached, there is no further accounting for the depreciation of the surviving units of the group despite the fact that there may be substantial additional life of many units of the group. As evidenced in Chart A, this plan produces a computed-reserve requirement, and a coördinated-reserve balance, far in excess of the other plans.

[7] The fickleness of the age-life computation in "joining up" with unit summation in the final stages of the reserve accruals is demonstrated by the change in the age-life reserve on the first day of the years 1942 and 1943. On January 1, 1942, the amount of decrease from the previous day would be $70. On January 1, 1943, the amount of decrease from the previous day would be $94.33. These amounts are obviously not associable with the retired amounts of $100 or anything like the true service-capacity cost retired. They are the product of inconsistency.

NEED THE "STRAIGHT-LINE" RESERVE BE EXCESSIVE?

THE separate determination of a depreciation rate for each unit of a group, as in the unit-summation plan, is theoretically sound, *provided that* such individualized rates are applied to properly weighted service-capacity unit costs (with due consideration of net salvage) rather than to superficial or conventional "unit costs." Such a scientific reconcilement of the group and unit-summation plans is, however, impractical of application. Fortunately, this particular obstacle of impracticability may be easily surmounted by fully pursuing the group plan (often described as an age-life plan, since it is really an adequate modification of the superficially deceptive "simple-ratio age-life plan"). In pursuing the group plan the "current booked accruals" are the same as would be produced by the aforementioned impractical plan of scientific reconcilement.

Moreover, pursuit of the group plan does not produce a misstatement—estimates being accurate—of net book cost (plant investment less depreciation reserve). It may be said, however, from the standpoint of the aforementioned strictly scientific treatment, that upon the retirement of any single unit of the group (excepting one of exactly the average life) there is an innocuous misstatement of the plant account exactly compensated by a misstatement of the depreciation reserve.

Why Standard Gauge Track?

NOBODY seems to know exactly just why so-called "standard gauge" happened to become popular and finally accepted for railroad construction—and subsequently for streetcar tracks and motor vehicles. The B&O Railroad, which began its construction between Baltimore and Ellicott City, Maryland, on July 4, 1828, adopted the gauge of 4 feet, 9½ inches, because it was one of two gauges then popular with the beginnings of railroading in England—the other gauge being 5½ feet.

It was not, however, until the Civil War railroad construction under the presidency of Abraham Lincoln that this gauge adopted by the B&O was made standard for the whole nation. But marks worn in the Appian Way, however, prove that this gauge was used by the Romans in making their carts. The late Daniel Willard, veteran president of the B&O Railroad, suggested that it probably grew out of the fact that 4 feet, 9½ inches, is the approximate width between the longitudinal middles of a pair of work horses walking side by side—the cart wheels being placed in the extension of these lines.

Other European nations than Great Britain followed the wider gauge for many years, however, and generally to the discomfort and transportation difficulty of the nation using it. Progress in Australia was set back considerably because the state railroads could not agree on common gauge track. Some historians have estimated that Czar Alexander of Russia set progress in his nation back fifty years by insisting on wide-gauge track as a defense measure—his theory being that it would prevent invading forces from other nations from using standard gauge equipment in Russian territory.

Electricity Out of Coal!

A preposterous statement, in the opinion of the author, which leads people to think that a load of coal comes in at one end of the power plant and goes out of the other end as kilowatts.

By GEORGE KERR

Mend your speech
Lest it mar your fortune
—King Lear

Owen D. Young, some years ago, said, "The danger is that the growth of our industry will outrun public understanding."

At intervals, the electric utility companies announce to themselves that, in the interests of better public relations, it is desirable for the public to understand the electric companies; to understand something of the workings of the business.

Then, as a step in carrying out this most laudable intention, they go around making such preposterous statements for public consumption as, *"We make electricity out of coal!"*

Naturally this leads people to think a load of coal comes in at one end of the power plant and goes out at the other end as a load of kilowatt hours.

The impression is created that electricity is imprisoned in every lump of coal and in some *mysterious* manner the electricity is liberated and sent over the wires to the customers.

Now what do people think when they find out the truth about this—when they discover that all the companies do with the coal is to use it in the most basic, elemental, fundamental, plain, ordinary way known to mankind?

They just *burn* it.

They use it for the same purpose grandma used it in the kitchen stove —*to get heat.*

The coal is burned to heat water, to make steam, to run a machine that makes electricity.

There are those in the industry who try to whip up a justification of "we make electricity out of coal" by coming out with a fine-spun dissertation to the effect that when the coal is burned the latent energy therein—*heat*—is liberated. This form of energy, the heat, is applied to water to generate still another form of energy—*steam.* This form of energy is applied to a

turbine to generate yet another form of energy. This time it is *mechanical* energy because it is work done by a machine (and energy is the capacity for performing work). This energy is applied to another machine, a generator, to generate energy in still another form, which, even though it comes from a machine, is not mechanical energy. It is, lo! the object of our quest, electric energy—*electricity.*

Now what has the lowly lump of coal to do with this scintillant evolution we have come upon? The coal is *four generations* removed from the electricity.

It passed out of the picture when it was burned and became ashes.

The grimy coal is not as closely related to the electricity as the grubby chrysalis to the diurnal lepidopter (butterfly to you).

It is about as fair to say electricity comes from a black substance formed by partially decomposed vegetable matter as it is to say some of our "first families" are felons and cutthroats because maybe their ancestors, four generations or so ago, were dumped upon these shores from the overstuffed prisons of the old world.

Then, how about the electric power plants (excuse it please, generating stations) where natural gas is used for fuel, to heat the water, to make the steam that runs the machine that makes the electricity?

Why don't the people in those companies go around saying, "We make electricity out of natural gas!"?

Or do they?

Anyway, why should the *fuel* get all the credit? Isn't it just as reasonable to say we make electricity out of the water or the steam?

Water!

Oh yes, that's right, they did say they made electricity out of water. At least they did say it. But that has sort of died out due to people complaining "Water is free! Where do you get off charging those terribly high rates?"

But it did sound awfully, well, romantic, when it was first hit upon. "White coal" they were wont to call water used in a hydroelectric generating plant. (Excuse me, "station," I mean.)

Of course, even then, there was about as much justification in saying electricity is made out of water as it would have been in olden times for someone to claim bread was made out of water because water ran the water wheel in the old mill where the grain was ground into flour.

Instead of saying "We make electricity out of coal," why not do the job right and tell how electricity actually is produced?

Lots of people don't know, you know.

You expostulate, "Oh, that's too complicated, too technical. People would not be interested!"

Well, you remember what G. K. Chesterton said, "There is no such thing as an uninteresting subject. What really exists is an uninterested person."

Furthermore, it has been done. Two very excellent examples come to mind. One by Ash Collins' Reddy Kilowatt people and another by Duquesne Light Company of Pittsburgh.

So effective was the latter that the company received a large number of

requests for copies from the Pittsburgh schools and other institutions of learning.

Then, too, the advertising men of the electric companies are exceptionally competent gentry. Turn those boys loose on the assignment and they'll come up with a bang-up job.

Howsoever, whether it be done or not, there may be a soupçon of sapience in the decision to stop saying, "We make electricity out of coal!"

Read Any Good Riddles Lately?

(Answers to these "What's This" jingles on page 422.)

1

What roams all over city streets,
But rarely comes to light?
And if it ever comes to light,
It makes the meeting bright?
What smells so good around one end,
With fragrant eats and drinks,
While at the other end you'd say
Confidentially, it stinks?

2

What hits the spot, but not enough,
To make it hit is really tough,
With feathered tail and pointed nose,
It keeps the fellows on their toes?

3

What travels in pairs but not very far?
Supposes to be square and generally are;
Cursed by some people, worshiped by others;
Prayed to and played to
And bounced like bad brothers?

Strikes and the Cost of Living

There is no magic in high wages *per se,* declares the author. What is needed are not increased wages that buy less and less, but wages that buy more and more.

By H. S. PERCIVAL

HUMAN nature being what it is, and what it seems likely to continue to be, the generality of mankind may be expected to strive more or less constantly for economic advancement. Almost everyone, therefore, may be counted on to do, more or less energetically, what in his opinion will aid his progress. Admittedly, the method employed is too often that of the hold-up man since not enough of us, nations as well as individuals, have yet learned that we do not lastingly advantage ourselves by despoiling our neighbor. Nevertheless the profit motive is not in itself wrong and the urge to better oneself is a good healthy itch.

For practically all of us getting ahead means getting more income. More income makes possible more outgo either for investment or for the purchase of more (or better) goods and services. If invested it is with the hope of financial gain which is useless unless finally spent for goods or services. So it all boils down to the fact that we want more money—wages in the broad sense of the term—in order to have a bigger house, to buy better clothes, or to send the boy to college; in other words, to exchange for something we want but can't very well obtain in any other way.

For the wage earner there are two general ways in which he can increase his income. He can do a better job—*i.e.,* more work better work, or both—or he can join his fellow workers and demand more pay for the same job. As to the first, we have all encountered the disgruntled employee who claims, and occasionally with justice, that his boss' real name is Simon Legree and that working his head off would get him precisely nowhere; but,

by and large, outstanding enterprise *is* rewarded. As to the second method, a few strikes may have failed of their objective but newspapers are continually reporting that through interference with production, or the threat of interference, this or that business has been forced to grant an increase in wages. Ordinarily then, either method can be counted on to produce results, but—and this is the important point—the results are not the same. In the first case, where by improving his output an individual gets an increase in wages, he has not only advanced himself but he has contributed something to the business of which he is a part and both he and the business share in the profits. Furthermore, nothing has been taken away from anybody.

CONSIDER now the second method. A group of workers in a factory, let us say, strikes for higher wages—and get them. Assuming no appreciable increase in factory output—and why should there be under the conditions—the owners of the business must (1) take the loss, (2) take part of the loss and pass on the balance to the consumer in the form of higher prices, or (3) pass the entire increase to the consumer. And the results? Lower profits, higher prices, or both. If the profits are lower the purchasing power of the owners and, consequently, the possibility of expanding the business are reduced correspondingly. If prices are raised business tends to slow up. In either case *something is taken away from somebody.*

But the matter does not stop there. Suppose the group who wangled the raise in pay was, for illustration, the furniture makers at the "A" factory. Their boost in wages is no secret. Newspapers publish the fact and those in the city where the "A" company's plant is located give a round-by-round description of the fight, including interviews with representatives of both sides. Therefore, the workers in every other furniture factory know all about it and—human nature being what it is—*they* are going to have an increase, or else.

EVEN if the boost in the "A" company went through without publicity, other furniture makers, and labor generally, will learn of it because union agents and labor leaders (who are just as anxious to hold their jobs as anyone else) make a point of being currently informed on such matters, and it is as certain as death and taxes that they would lose no time in pointing out to the workers in the "B" plant and the "C" factory the rank injustice of being forced to continue at their present miserable wages in the face of the higher wages paid at the "A" factory. Therein, incidentally, lies one of the most difficult problems in the whole field of labor. A labor leader to be worth his salt must constantly be pointing an issue—an injustice to be corrected, an inequality to be leveled out—and if there isn't one at hand ready made, so to speak, there are strong inducements to create one out of whole cloth.

However, to go into that problem would take us beyond the scope of this discussion; so let us get back to our furniture makers. When we do, and the returns are all in, we shall find that furniture makers generally are getting higher wages and that the price of furniture has gone up, or the quality

has gone down, or both in varying degree.

But how about the machine tool workers? Shall they sit idly by while their friends and neighbors in the furniture industry enjoy the benefits of more money in their pay envelopes? The answer is that unless the machine tool workers are taken care of also, sitting idly by is just what they are likely to do, and, although concededly it is all wrong, it would be hard to blame them very much. And so it goes.

The plumbers have just as good a case as the machine tool workers and there is no earthly reason why they should be discriminated against. If the plumbers, why not the carpenters, the mine workers, the elevator operators, and so on through the list? It is a chain reaction that has no natural stopping point.

So in this way labor costs per unit produced have gone up and up, and, cut it how you will, higher labor costs per unit inevitably spell higher prices. While a few items—notably electric power and telephone service—have, through technological advances, held the level or even decreased, the price of the great bulk of the items of daily living, necessities as well as luxuries, has climbed steadily upward.

Granting this, however, still it must be admitted that a general wage increase to a sizable group of workers produces a considerable economic stimulus. And suppose the movement does spread to other labor so that sooner or later the cost of living is increased to everyone. In the meantime the groups that got in early are getting more income and, when the cost of living catches up, the whole thing can start over again. It is a poor labor leader who can't keep his group at least even with the game.

Well, there are at least three things wrong with that picture. In the first place a general wage increase for a group means that the incompetent or lazy worker is moved up along with the competent and enterprising, which is wrong psychologically as well as economically. Not only that, but group increases and the attendant negotiations lead to wage schedules with fixed starting rates, fixed progression increases with time, more or less regardless of merit, and with fixed ceilings (fixed, that is, until the group concerned declares the deal off and starts over again). These rigid schedules make it difficult, if impracticable, to reward the capable and energetic worker beyond his fellows except by transfer to another group, which is often neither feasible nor desirable. They destroy incentive and lower morale and the whole scheme is contrary to the sound principle of compensation in proportion to value.

❡

¶ "For *practically all of us getting ahead means getting more income. More income makes possible more outgo either for investment or for the purchase of more (or better) goods and services. If invested it is with the hope of financial gain which is useless unless finally spent for goods or services.*"

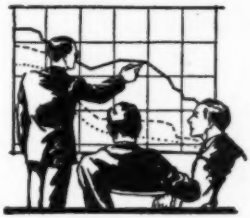
IN the second place, a group increase is in most instances the result of group pressure, that is, pressure on management, on the owners, and frequently on the public; and about the easiest way of exerting such pressure is to stop work, or threaten to do so. The economic disturbance—the losses and dislocations—resulting from a stoppage of work by even a small group is bad enough, but a more serious aspect of the matter is that such group action, whether or not it culminates in a strike, immediately creates in effect an armed camp with the employees on one side arrayed against the management and the owners on the other and, as the average worker sees it, with the management actively hostile to the employees.

The situation is clouded with bitterness and suspicion and the majority of the employees are convinced that their interests are directly opposed to those of management and the owners when, as a matter of fact and in the very nature of the case, the interests of the employees, the management, and the owners are mutual. Whatever hurts one, that, in the long run, works to the detriment of the others; whatever benefits one is, over the long pull, to the advantage of the others. The term "employees" as here used is intended to connote generally the non-supervisory workers. Actually, of course, "management" consists of employees.

IN the third place something is definitely taken away from somebody and that "somebody" *includes the wage earner himself*. Not only does an increase in the cost of living impose a direct loss on that large group of people whose income is more or less fixed, but it also penalizes the workers whose increased wages are responsible for the situation. An "increase in living costs" is merely one way of saying "a decrease in the purchasing power of the dollar," which means that every insurance policy which the wage earner has been carrying as protection for his wife and family is marked down.

True, the policy pays the number of dollars called for but the dollars are no longer worth so much and as a result his wife and family will not have the protection which he counted on and paid for when he took out the policy. Likewise, every dollar of savings that he has put away for the rainy day has shrunk in value—it won't buy what it would when he earned it. Similarly, every dollar of retirement pay, every unit of social security, has lost some of the security it was expected to provide. So, while his increased wages may temporarily meet the increase in the cost of living, the very wage earner who demanded and got the increase is actually in worse state than before.

CLEARLY, then, permanent economic improvement, better standards of living, and the good things implicit therein, are not to be attained by dog-chasing-his-tail gyrations around the spiral of group wage increases, increased living costs, and more group increases to meet still higher living costs. It is equally clear that mankind is far from having reached the limit of economic progress if, in fact, there is a limit. Consequently there must be a solution and, since practically all men depend for their livelihood on wages in some form, the solution must involve wages. This brings us back to our



Higher Labor Costs Spell Higher Prices

" . . . labor costs per unit produced have gone up and up, and, cut it how you will, higher labor costs per unit inevitably spell higher prices. While a few items—notably electric power and telephone service—have, through technological advances, held the level or even decreased, the price of the great bulk of the items of daily living, necessities as well as luxuries, has climbed steadily upward."

original premise; namely, that there are two ways by which the income of wage earners can be increased. The second way—browbeating management into paying more money for the same job—brings in more dollars but defeats its own purpose by cheapening the dollars so that in the end there is little or no increase in real wages. This being the case the solution must lie in the first way; *i.e.*, doing a better job.

Doing a better job means improving the output by increasing quantity, improving quality, or both. The problem resolves, then, into finding ways and means of improving output and in such a manner that wages are kept in sound relation to the cost of living.

THROUGH technological and administrative developments much has already been done to improve output. Witness the increase in the number of communication channels per line conductor, the increase in kilowatt output per dollar of investment in generating machinery, and the increase in bushels of wheat and pounds of cotton per acre. These and thousands of other "improvements in output" all tend to lower the cost of living, and note that a 10 per cent decrease in living costs gives the wage earner a greater increase in purchasing power—*i.e.*, real wages—than does a 10 per cent increase in wages with living costs remaining the same. Note also that these improvements in output are in every case the result of someone's doing a better job.

While a great deal has been accomplished through "improvements in the art," much more remains to be done; but that rests largely in the hands of management and the highly trained employee. What can be done in the case of the day-to-day job of the average worker? Fortunately, in almost every group of workers there are a few who have a strongly developed urge to get ahead and who are not allergic to work.

By sheer enterprise such men and women generally move into supervisory positions and, ultimately, where qualified, into executive positions.

But in the great majority of employees the flame of ambition is not a consuming fire. While they wish to advance economically, their interest in the job goes little beyond its function as a means of livelihood, and prospective promotion is not enough to inspire them to efforts much in excess of the minimum required to insure their place on the payroll. In many cases also they are handicapped by the deadening effect of that all-too-frequent result of so-called collective bargaining—wage schedules. In such cases the young employee may well ask why he should exert himself when wage increases arrive automatically with the passage of time. The older employee who is at or near the wage ceiling for his group, and who is more or less anchored by his years of training in that group, is not likely to feel any great urge to improve his output. It is these conditions which make the problem difficult and not the least of the difficulties is the fact that, of the two methods of getting an increased income, waving the big stick of concerted work stoppage is easier; it is more exciting, and to the average worker it appears to produce the results he is after.

Difficult though it is there are two lines of attack on this phase of the problem which not only hold promise on the basis of theoretical considerations but have been found effective in practice.

Incentive Pay

Human nature being what it is, self-interest is paramount and if an employee is convinced that it is definitely and immediately to his interest to turn out more work, or better work, there are few who will not respond. One way of convincing him is through incentive pay, and if this leads to jettisoning wage schedules so much the better. The president of a manufacturing company reports the results of a trial of an incentive system in terms which leave no doubts as to improved output in his company and he adds something still more important: "This incentive has changed our workers from people who are working at a job at so much an hour into people who feel their success is tied definitely, completely, and proportionately into the success of the company itself."[1] Furthermore, he states that in the ten years' trial period (which ended in 1943) the average wages of the worker went up from $1,300 per year to over $5,400, dividends increased from $2.50 to $6, and the price of the product *decreased* about 60 per cent. Clearly, the management, the owners, the employees, and the purchasing public all benefited—and nothing was taken away from anybody. While other cases could be cited, the opportunities in this field have scarcely been touched. Obviously, no one formula would apply generally and no doubt each case would present difficulties, but for companies which manufacture or process commodities the plan has great possibilities.

Profit Sharing

For some companies, particularly those whose product is service, measurement of employee output and

[1] From an address by James F. Lincoln, president of the Lincoln Electric Company, Cleveland, Ohio.

¶ "THERE *is no magic in high wages* PER SE*; it is only by making more goods and services available to more people at lower cost that the wage earner really benefits from increased income and this is not to be accomplished by group wage increases not tied in with improved production. Such increases lead inevitably to wages that buy less and less. What is needed are wages that buy more and more.*"

proportionate compensation may not be practicable. In such cases the incentive to more and better work may well take the form of a share in the profits over and above wages. Here again there is a variety of methods and no one plan fits all cases but employee ownership of stock in the concern is feasible in many instances. There is nothing that so changes the attitude of the average worker toward company property, company time, and company profits, as the ownership of an interest in that company and the regular receipt of a share of the profits.

Some assistance in acquiring stock would usually be essential in making the plan attractive and in securing a wide spread, particularly among the younger and lower paid employees, but any reasonable outlay would generally be a sound investment. There is reason to believe that the money often spent in providing elaborate rest rooms, company libraries, and entertainment such as movies, etc., would be more profitably invested in helping the workers obtain a share in the enterprise—and with better effect on employee morale. It is even possible that in some companies stock holding by employees of more than a few years' service could to advantage be made mandatory—of course with appropriate escape provisions for special cases.

THE above two approaches to this part of the problem, although discussed separately, are not mutually exclusive and there may well be instances where they could be combined to good purpose. However, neither of these plans develops its full effectiveness unless it is so administered that the employee not only feels he is sharing in the profits but that he has a real stake in the enterprise, and that his welfare is closely tied in with the welfare of the company.

Top management too often forgets that nonsupervisory employees are also "management" in the true sense of the term, in that those employees deal directly with company property, with company time, and frequently with the public on company business.

Consequently, and by virtue of their numerical superiority, they constitute an important factor — sometimes a dominant factor—in the success or failure of the enterprise. This being the case, would it not be good business, as well as good ethics, to provide them (through their representatives) with a place in company councils, to secure their views in connection with important company projects —in general, to recognize, and *capitalize,* the fact that they are partners in the enterprise?

No doubt there are approaches to the problem other than those discussed herein, but from a strictly economic standpoint the essential feature of any successful attack on the problem lies in obtaining an increase in quantity (or quality) of product at a cost less than the market value of the increase. Only in this way can augmented employee income represent a real and enduring gain. There is no magic in high wages *per se;* it is only by making more goods and services available to more people at lower cost that the wage earner really benefits from increased income and this is not to be accomplished by group wage increases not tied in with improved production. Such increases lead inevitably to wages that buy less and less. What is needed are wages that buy more and more.

Which Will You Have?

"ONE of the strongest arguments being put forth to prospective purchasers of public utility district bonds on the Pacific coast is the fact that such districts are not subject to state regulation of rates like the private power companies. They charge what the directors order. A clause in the ordinance of a typical PUD states that 'The district shall reserve the right to charge and collect the rates provided, and to change said rates at any time by ordinance.' Consumers can take it or leave it. This is public ownership.

"On the other hand, consumers served by an investor-owned electric company have a powerful and conclusive voice to speak for them in the matter of electric rates, the utilities commission. The commission, as a public body, keeps a watchful eye on every dollar of revenue collected by the private utilities. The public interest is a primary concern. No electric company can 'reserve the right' to change rates at 'any time.' This is private ownership."

—Excerpt from Industrial News Review.

Answers to page 414: 1. Gas pipe. 2. A dart. 3. A pair of dice.

Government Utility Happenings

Krug Takes Interior's Reins Without Policy Commitment

"WHILE I feel strongly that the TVA has done great good for the people of the Tennessee valley, I don't know that similar projects would be the best way for other regions. I won't know until I study the problems involved in each area."

With those words Julius Albert Krug disposed of one of the "$64 questions" put to him by a Senate committee investigating his qualifications as President Truman's appointee for Secretary of the Interior. This answer—as to his viewpoint upon proposed valley authorities—and the rest of his testimony evidently pleased the Senate, which speedily and unanimously confirmed his appointment. Then, after a brief vacation, "Cap" Krug on March 15th took over the Cabinet post angrily vacated some two weeks earlier by Harold Ickes.

In the above quotation and in other statements before the Senate committee, "Cap" Krug made it plain that he was going into his new job without commitments upon "valley authorities," public power, tidelands oil, or any of a dozen other controversial situations into which his predecessor had leaped with both feet. In fact, Krug's expressed determination to "study the problem" was in refreshing contrast to the Ickes policy of making swift and often rash decisions on public issues, ranging from the development of atomic energy to the advisability of certain of President Truman's appointments. It is almost certain that Secretary Krug will confine his known abilities as an administrator to running the Interior Department and, even there, probably will make no hasty decisions.

THE new Secretary has come a long way since his days as a student at the University of Wisconsin, where he majored in public utilities administration. After college he spent eighteen months with the research department of the Wisconsin Telephone Company, then joined the Wisconsin Public Service Commission. He was "loaned" by the state agency to the Federal Communications Commission, assisting in the latter's investigation of the American Telephone and Telegraph Company. Later, as manager of power operations for the Tennessee Valley Authority, he took part in the negotiations for the purchase of Commonwealth & Southern facilities.

The war brought Krug to Washington, first with the OPM, then with its successor, WPB. As head of WPB's Office of War Utilities, he won the respect of private industry for his common sense and just dealing. When he succeeded Donald Nelson as chief of WPB, he gained high regard for his administrative ability in straightening out the tangled affairs of that agency. He entered private business as an engineering consultant at the close of the war.

Though he became Secretary of Interior without commitment on any matters of policy, "Cap" Krug sooner or later may guide his department away from some of the theories pursued by Ickes, with whom he frequently clashed during his WPB days. An indication of one major policy change may have been Krug's assertion to the Senate committee that he favored "an economy that operates as freely as possible without government interference."

Meanwhile, Harold Ickes, still irate over the President's hasty acceptance of

his resignation, signed a contract to write a column for the left-wing *New York Post*. Washington wags suggested that the column be entitled "Curmudgeon in a Dudgeon."

Co-ops Warned of Opposition At NRECA Convention

REPORTS of mounting opposition to the federally financed program of rural electrification featured the addresses of speaker after speaker at the annual meeting of the National Rural Electric Coöperative Association. At the close of the 3-day sessions (March 4th, 5th, and 6th) in Buffalo, New York, the association had voted to take aggressive action to meet this reported opposition.

Principal activities scheduled in this connection, as indicated in resolutions adopted during the meeting, include:

1. Vigorous opposition to current and possible future efforts to restrict the purposes for which the Rural Electrification Administration may grant loans to the co-ops.

2. A general review of coöperative practices in carrying out the objectives of the Rural Electrification Act, in order to forestall criticism of the co-ops.

3. Active support of "the public power program now under consideration in Congress."

Only the Harris Bill (HR 5555) drew specific fire in the association's resolutions. However, several speakers, including Senator Robert M. LaFollette of Wisconsin and Clyde T. Ellis, executive manager of NRECA, attacked this measure and other bills containing provisions which would restrict REA's lending authority. Ellis, who operates out of NRECA headquarters in Washington and more than once has advised Congressmen as to the demands of the association's membership, blasted the House committeemen who submitted the Harris Bill.

This committee, he recalled, had been studying for more than a year the Poage Bill (HR 1742), which would have given REA $585,000,000 for lending purposes over a 3-year period—with no strings attached. The committee was unable to agree on amendments for this measure, and its chairman, Representative Oren Harris, Arkansas Democrat, introduced a bill to replace it. The substitute measure would give REA $150,000,000 in loans for each of the next three fiscal years and would require Federal Power Commission or state commission approval of loans for constructing generating plants or transmission lines.

"Area Coverage" Endorsed

THE association endorsed a resolution favoring "complete area coverage" by all coöperatives taking part in the rural electrification program after hearing pleas for action along these lines by REA Administrator Claude Wickard and other speakers. Wickard warned the gathering that certain Congressmen had complained that some coöperatives, after receiving REA loans and getting their power facilities, had been reluctant to extend electric service to scattered farms in their areas. This practice he termed as "unthinkable" and unjustifiable to the critical Congressmen.

Deputy REA Administrator William J. Neal also declared that the time had come for the co-ops to make sure that they were getting good management, that their accounts were kept in accordance with accepted accounting practices, and that their rates were revised to reflect "the true condition and value of the individual coöperatives." Such rate revision, he added, was necessary to insure the success of the "complete area coverage" program. These remarks aroused speculation among some observers as to whether many co-ops would be forced to increase their retail power rates in order to extend their lines to very thinly populated areas.

Neal plumped for public power projects in general and the proposed St. Lawrence seaway development in particular, by charging that the price of power has steadily increased in the northeast-

ern states, where there are no public power projects. REA co-ops, he added, pay more for power in this area than anywhere else in the United States. Senator LaFollette also made a brief for public power projects, which, he said, "mean lower rates to REA coöperatives."

"The public power program now under consideration in Congress," to use the wording of the NRECA resolution, evidently includes the St. Lawrence seaway proposal, appropriations for transmission lines and steam-generating plants of the Southwestern Power Administration, and for transmission line construction by the Bonneville Power Administration and the Bureau of Reclamation. All these measures were being studied by various congressional committees at the time of the convention. Even before the association met, however, a group of co-op members appeared before the House Appropriations Committee to support the budgetary requests of the Southwestern Power Administration.

THE association failed to act upon a proposed resolution favoring the abandonment of the sale of electrical appliances by coöperatives in areas already served adequately by appliance merchants. This proposal met considerable opposition when it was submitted during an open forum session. Typical of the objections were those of a midwestern co-op official, who declared that his coöperative was doing a mail order business in electric bulbs which amounted to total sales of 15,000 bulbs annually.

Previously, Representative W. R. Poage, Democrat of Texas and an ardent defender of REA in Congress, had urged members of NRECA to withdraw from the appliance business. Coöperatives' activities in this field, he declared, had proved "offensive" to small, independent appliance merchants. The co-ops, he added, should keep the friendship of these small dealers who, in turn, would support them in their fight against "more powerful interests." The expansion of the electric co-ops in the appliance trade, he continued, would weaken their position in retaining their tax exemption privileges.

Truman Pledges Support

PRESIDENT Truman, in a message read at the opening session of the meeting, pledged his support to the coöperatives. "So long as you keep working on the task at which you are now engaged, you will have the full and active support of this nation," the President wrote. "The administration will provide every possible aid."

The proposed ban on appliance sales was the only controversial issue introduced and this failed to alter appreciably the atmosphere of harmony and coöperation in which the meeting was conducted. This atmosphere contrasted sharply with that of last year's stormy convention at San Antonio, Texas, where a large bloc of delegates attempted to put the association on record as favoring the reëstablishment of REA as an independent agency.

Further attempts along these lines probably were forestalled by Secretary of Agriculture Clinton Anderson and Administrator Wickard, who assured the Buffalo delegates that the Agriculture Department had been extremely helpful since REA moved from St. Louis to share offices in Washington with its parent department. After asserting that "REA now enjoys complete freedom of action," Secretary Anderson indicated that the agency derived distinct advantages under its present setup. He said:

> . . . the needs and wants of the rural people in regard to further extension of REA service in unelectrified areas have been very effectively presented in congressional circles. Those needs are considered by congressional committees that understand the programs and objectives of the Department of Agriculture. I believe you will find that the REA cause has not suffered in this respect, either because the agency is a part of the department or because its offices are now located in Washington in easy reach of members of Congress who may desire additional information about the program in their states.
>
> I wish to assure you that the service of the Secretary's office will at all times be available to REA when our support is needed.

With these sentiments Administrator Wickard concurred with the statement that "we are now happily situated in the (Agriculture) Department."

Wickard Scores Utilities

WICKARD keynoted a general attack by a number of speakers upon the competition of private utility companies. This competition he described in the following language:

> We are facing a bolder and perhaps a more desperate opposition from private utilities at this time than REA has ever before experienced. This opposition extends from cream-skimming spite line activities in areas laid out for development by coöperatives to the maintaining of a strong lobby in Washington. A nation-wide advertising campaign in the weekly and daily press, in nationally circulated magazines, and on the radio networks is being carried out. State legislatures and regulatory bodies, as well as the national Congress, are being flooded with utility proposals for various restrictive measures to be applied to the REA program.

As in other recent speeches, Wickard deplored the fact that a few co-ops had chosen to sell out to private power companies and that it seemed possible that more sales would follow. He expressed distrust of offers of reduced rates and expanded service by the private utilities, declaring that the private companies "are in business for just one purpose . . . to obtain profits from consumers' power bills."

THIS attack was continued, even more vigorously, by Clyde Ellis. Ellis' remarks on the private power companies covered a wide range of charges, from plain and fancy lobbying to suggestions of attempted bribery.

He chose to repeat a current rumor about a utility executive, whom he described as "lobbying against our program in Washington." The man to whom Ellis was referring came to Washington to testify in opposition to the Southwestern Power Administration's proposed expansion program. Ellis insinuated that this official had attempted to obtain congressional favors by means of personal gifts of a somewhat trifling category. It was not stated, however, whether the gifts had actually been received or whether the official had merely thought about it. To this extent, however, the SWPA program—in which the majority of NRECA may previously have had little knowledge or interest—obtained an inferred endorsement by NRECA as "our program in Washington."

Ellis also professed to detect the work of alleged power company lobbyists behind a restrictive clause tacked onto the $100,000,000 REA loan fund in the recent Urgent Deficiency Appropriation Bill by the Senate Appropriations Committee. On this point, however, the record indicated that Senator Kenneth McKellar, Tennessee Democrat and chairman of the Appropriations Committee, and long-time TVA champion, had complained that the only objection to the restrictive clause had appeared in the form of telegrams, signed by Ellis, to every member of the Senate.

In any event, the Ellis telegrams were apparently effective, since the objectionable clause was voted down on the floor of the Senate.

Letters versus Pressure

IN the course of his attack on business-managed utilities, Ellis congratulated members of the association for writing many letters to their Congressmen in favor of the Urgent Deficiency Bill. He made the following interesting distinction between such activity by NRECA members and so-called "lobbying" tactics of pressure groups:

> Do you see what you did? Not high pressure, just letting your Congressman know what you need and want. There was opposition, but the bill went through the House without serious threat.

J. C. Nichols of Cody, Wyoming, was elected president of NRECA, succeeding E. J. Stoneman, and Louie C. Spencer, Jr., of Greenwood, Mississippi, was named vice president. Ellis and Secretary-Treasurer Avery C. Moore of Bristow, Washington, were reëlected. Ellis announced that recent increases had brought NRECA membership to a total of 547 coöperatives.

The addition of the new member coöperatives, he added, would permit NRECA to increase its Washington headquarters staff and "thus do a better job."

Wire and Wireless Communication

AN interesting commentary on the relationship between rural electrification service and rural telephone service was given in a speech before the fourth annual convention of the National Rural Electric Coöperative Association in Buffalo, New York, on March 6th by Harold S. Osborne, chief engineer of the American Telephone and Telegraph Company. The address was entitled "More and Better Telephone Service for Farmers."

Dr. Osborne pointed out that the commercial telephone companies have always tried to assist telephone coöperatives in the rural field because the latter, since the beginning of this century at least, have played an important rôle in rendering communications service to the farmers. He said that out of about two and one-half million telephones now in service in "rural areas," approximately three-quarters are being serviced by commercial companies and one-fourth by telephone coöperative associations; but while rural telephone development in the United States is thus higher than anywhere else in the world, the telephone industry would still like to see it developed even more, according to Dr. Osborne.

Such development would take the form of more modern improvements, wider use, and other betterments commensurate with the great gains made in recent years in rural electrification. He pointed out that the charge for telephone service in rural areas is generally less than for service in towns and cities, and that the service standards are now as high—there being eight to ten parties to a line, as compared with 1-, 2-, and 4-party service common to the urban subscriber. The speaker stated:

> In what I have to say on this subject, I will speak specifically of the plans of the Bell telephone companies whose service areas include about one-half of the rural areas of the country. In addition to the Bell companies, there is a large number of independent companies whose service area includes the other half of the rural areas of the country. For the purpose of service, all of these companies, Bell and independent, work together and, with the service-line groups, provide one great nation-wide telephone system. I'm not authorized to speak for the independent telephone companies, but know that they are working actively on plans for extending telephone service in the rural areas which they serve to the same end of increasing telephone service in these areas as rapidly and as much as possible.
>
> The rural areas served by the Bell companies include approximately 2,500,000 farms with dwellings. Of these, over 80 per cent can be served from present telephone lines with no charge to the customer other than the normal installation and monthly charge for service; that is to say, that they can be served without paying a charge for the construction of the lines. This comes about because the telephone companies and the service-line companies together have built about 350,000 miles of rural telephone pole lines in these areas and because the telephone companies generally speaking extend their lines without construction charge to any customers that can be reached where the new construction does not exceed one-half mile of pole line per customer.

LESS than half the residents of rural areas to which such service is avail-

able without construction charge are now taking it. But requests from farmers are coming in steadily and the Bell system hopes that service connections can be rapidly increased as man power and materials ease up. This trend, the speaker said, should be helped by making service more attractive with such features as dial phones instead of hand-crank magnetos, selective ringing, and so forth.

But it is the remaining 20 per cent—those who are not presently within connecting distance of existing Bell telephone facilities (without construction charge) which is receiving special attention. Dr. Osborne said on this point:

> . . . One important development which was already in use before the war was the use of high-strength steel wires and long spans, a form of construction similar to that used in rural power construction. By reducing the number of poles from an average of 30 per mile to an average of 17 per mile a considerable reduction in cost is achieved and distant groups can be more readily reached. Along with this long-span construction the telephone companies have developed improved construction methods and equipment. Straight lines across private right of way rather than following roadways are used where cost saving results from the reduced amount of guying and of tree trimming. We are just completing the development of light duty mechanical pole hole diggers, particularly designed for rural lines.
>
> The telephone companies experimented before the war with buried wire. Special moisture-proof types of insulation and mechanical protection are required. The wire is buried by a special form of wire-burying plow which produces a furrow, feeds the wire into the bottom of the furrow, and closes the furrow all in one operation. Improvements in this form of wire, based on the prewar experience, are now being developed and we believe that it will have an important field of use where only one or two pairs of wire are required and where the conditions are favorable to plowing.

He spoke also of radiotelephone experiments to remote farm areas, such as a project recently installed between the town of Cheyenne Wells, Colorado, and eight ranches at a distance of 12 to 20 miles from that town.

DR. OSBORNE saved until the last his review of joint power and telephone developments which naturally would be of special interest to the REA co-op members in his audience. First he touched on the item of the joint use of the pole line for power and telephone wire. Before the war there was difficulty in such practice (except for short distances) because rural telephone wire is not generally sheathed as it is in city areas, and rural power lines commonly carry higher voltages than urban area distribution lines.

Nevertheless, recent experiments on lines of both rural electrification co-ops (in coöperation with REA) and of business-managed power companies (in coöperation with the Edison Electric Institute) have shown that under proper conditions joint telephone-power use of rural pole lines for construction is feasible, practical, and economical. The speaker mentioned especially experiments on lines of the Alabama Power Company at Selma, Alabama, the Lake Region Electric Coöperative at Webster, South Dakota, and the Southwestern Minnesota Coöperative at Pipestone, Minnesota.

As to the more sensational recent experiments with the so-called "carrier phone," Dr. Osborne stated:

> . . . These devices will not interfere with the power line but add something to the cost of the system. The proposal is that the devices connected to the power line should be installed by and maintained by the power people, at the telephone company's expense, and that the telephone companies would provide and maintain the carrier apparatus at both ends of the line as well as the rest of the telephone line and equipment. Power for the operation of the carrier equipment and the telephone is taken from a convenience outlet on the premises.
>
> The present prospect is that with the minimum prices which will result from quantity production the carrier telephone system may be cheaper than building a new telephone line where the distance between telephone customers averages one-half mile to a mile or more, but that this system will not be economical in areas where the density of telephone development is greater. The field of application of the system is not yet certain, however, as it will depend upon how low the cost can be made when the carrier apparatus is in large-scale production.
>
> The Bell Telephone system has arranged to proceed at once with the production of this system. First units will be available in

June and general factory production available in late summer. The Bell companies intend to make this equipment available to independent telephone companies and also to service-line groups connected with either Bell or independent companies. They have also offered to independent telephone manufacturers a royalty-free license under Bell system patents for the construction of this type of equipment. We believe that in many places this development will make an important contribution to the problem of giving telephone service to everyone who wants it.

THE Bell system is now adding 200,000 rural telephone subscribers a year and hopes to raise the net increase to 250,000 a year by the end of 1946. The independent telephone companies doubtless are doing their share as well, since the independents operate (proportionately according to subscriber classification) in rural areas even to a greater extent than the Bell system.

The speaker reminded his audience that telephone service and power service are not competitive but are supplementary. Each helps the other. The power service helps the farmer to greater production; telephone service helps to sell his products and buy what he needs.

Following Dr. Osborne's address, the NRECA passed a resolution calling upon the Bell system to double its proposed program for spending $100,000,000 on rural telephone service during the next 5-year period. The resolution also urged the independent telephone companies to set aside relatively favorable sums so that rural areas will have adequate telephone service.

* * * *

THE Western Union Telegraph Company has received permission from the Federal Communications Commission to experiment with a new wrinkle in radio delivery of telegrams by a radio-equipped truck which will print the message as it rolls toward its destination.

The FCC authorized the telegraph company to construct two experimental radio stations in the Baltimore area. A fixed station will receive telegrams and send them via radio to a "radiotelegraph delivery unit," a mobile radio station mounted in truck or sedan.

Radiotelegraph delivery will speed service, Western Union declares, and it can be used to inform the central telegraph station that the addressee has moved, or to transmit a reply to the telegram. Western Union told the FCC:

> The truck will be in motion to the next delivery point while transmitting or receiving messages, and, in thus moving continuously throughout the area, the distance traveled and the delay to message delivery will be reduced.

Western Union plans to use both facsimile and teleprinter in its delivery experiments.

The Yellow Cab Company of Philadelphia, Pennsylvania, was authorized to construct experimental fixed and mobile radio station to develop a radio communication taxicab dispatching system.

* * * *

FOLLOWING the recent annual report of the American Telephone and Telegraph Company to stockholders, it is noteworthy that some of the Bell system companies, in their separate reports, showed an even wider variation between prewar and postwar net earnings as compared with rising revenues. Mr. Powley, president of the Pacific Telephone & Telegraph Company, in the 1945 annual report of that organization recently issued, stated that "although it experienced an exceptional growth throughout the war years, our company did not profit from the war," and pointed out that "the report contained a tabulation comparing the year 1945—the end of the route to Tokyo bay—with 1939—the year in which ominous war clouds cast their impending gloom—which vividly portrays, not only what our company's expansion has been throughout the years of its war effort, but also the impact of this expansion on its major operations." In quoting from the report, Mr. Powley called attention to the following:

> . . . out of a $126,701,783 increase in operating revenues only $1,654,339 revenue betterment was carried to income available for interest and return. Invested capital, however,

so increased that the rate of return thereon was only 5.87 per cent in 1945, whereas in 1939 it was 6.33 per cent—the average for the entire period being only 5.83 per cent. . . .

Our immediate task ahead is to render service to all who want it and to restore and to take our service to new heights. As it announced December last, in the immediate 5-year period our company will be required to make expenditures for new construction aggregating $400,000,000 and, as a consequence, extraordinary amounts of new capital will be required. The execution and speed of this entire program are dependent upon the flow of available man power, materials, money, and the level of business conditions. The consummation of the program for 1946, now well under way, will require, it is estimated, an all-time high expenditure of upwards of $90,000,000 for new construction. This compares with the $35,800,000 expended in 1945. Inclusive of materials reused, the gross plant additions for 1946 are estimated at well over $100,000,000. This expenditure will be more than double the 1945 gross plant additions of $48,791,000.

* * * *

LABOR peace returned to the telephone system on March 7th after a threatened national strike had been averted by a predawn agreement on wage increases averaging 17.6 cents an hour for 150,000 Bell system workers.

The only remaining trouble spot—the 9-week strike of 17,300 Western Electric workers at 21 plants in the metropolitan New York area—seemed likely of solution when the strikers met in Jersey City on March 8th to vote on a return to work under the 17.6-cent formula. However, difficulties developed in conferences intended to establish a final settlement of the Western Electric walkout and there was said to be an outside possibility that union leaders might recommend delay in ending the strike.

The telephone walkout, which had been expected to bring about the most widespread communications tie-up in the nation's history, was called off at 5.30 AM, thirty minutes before the strike deadline.

Operators already were leaving their switchboards and picket lines were forming in Washington, Philadelphia, Cleveland, Detroit, and other key centers when word of the settlement was flashed from the capital, where top Federal conciliators had been conferring almost uninterruptedly for two days and nights with union and company negotiators.

Brief interruptions of service were recorded in several cities but service was normal everywhere by 8 AM. In New York, some long-distance operators had put on their hats and coats preparatory to walking out, but they received news of the agreement in time to prevent any break in service in the city.

Officials of the National Federation of Telephone Workers were reported to be jubilant at what they regarded as the first break in the resistance of the American Telephone and Telegraph Company to system-wide bargaining. The settlement reached in Washington applied directly to the 19,300 employees, the Long Lines Department of the AT&T, but it was not accepted until the company had given assurance that it would be used as a pattern for increases to 16 other employee groups all over the country, which were involved in the strike threat.

* * * *

THE Federal Communications Commission is making revisions in its application forms for station and renewal licenses, and other proposed "procedural changes" designed to check "advertising excesses" and further improve "the quality of program service."

Comment from licensees and from the public on its proposals and recommendations, made public on March 7th in a 139-page report, is invited by the commission in recognition of the fact that "much of the responsibility for improved program service lies with the broadcasting industry and with the public."

The commission has a responsibility to consider over-all program service in its public interest determinations, the report said, but "it is to the stations and networks that listeners must primarily turn for improved standards of program service."

In the matter of advertising excesses, the commission reported general relaxation of advertising standards in recent years, and abundant evidence that even the present NAB standards are being flouted by some stations.

Financial News and Comment

By OWEN ELY

Utility Analyses by Wall Street Firms

S. A. O'Brien of Hettleman & Co. has prepared a memorandum on *American Water Works & Electric Company,* discussing the segregation of the water properties from the electric. He concludes that, after extensive refundings of the water company bonds and preferred stocks, the new water company common stock might earn at least $1 to $1.10 per share. Capitalizing this at 13 to 14 times earnings, the potential market price is estimated at 13 to 15½. It is estimated that the subscription price for stockholders of American Water Works will be fixed at 12, giving the rights a market value of 1-2.

Mr. O'Brien also estimates the earnings of the electric, gas, and transportation subsidiary at around $3.60-$3.70 per share, for American Water Works. In arriving at these earnings (which are over 7 times the reported earnings of 70 cents for the twelve months ended September 30, 1945) Mr. O'Brien adds, in a special tax adjustment credit, $2,300,000 estimated tax savings, $1,573,000 to be obtained through recapitalization of West Penn Electric Company, and $510,000 to be gained by refunding preferred stocks of subsidiaries (less $500,000 estimated expenses). On the basis of $3.60 a share, he estimates the possible future market price for Water Works at $46-$50 per share. The firm expects to issue a more detailed analysis based on the new plan recently filed with the SEC.

Cowen & Co. has prepared a brief memo on *United Light & Railways,* describing the company's progress with its integration program. Following the liquidation of American Light & Traction and the proposed sale at public bidding of Columbus & Southern Ohio Electric, United would continue as a holding company with operating units in Iowa, Missouri, and Kansas. On completion of this program *pro forma* earnings of $2.75 to $3 per share are "indicated, thus suggesting an ultimate value of well over 40, and possibly as much as 60, for United Light & Railways common."

United Light and its subsidiary, Continental Gas & Electric, recently refunded $75,000,000 debenture 5s and 5½s with low-cost bank loans, and Continental redeemed $11,100,000 7 per cent preferred held by the public, this program resulting in substantial interest savings, plus nonrecurring tax reductions. Columbus & Southern Ohio Electric has also been refunding its preferred stock, and dividend savings combined with tax reductions may boost 1946 earnings to over $2,500,000. On this basis, Cowen & Co. expects United Light to realize $35,000,000 or more from the sale in April, proceeds being used to reduce the recently incurred $50,000,000 bank loan.

The firm appraises the break-up value of American Light & Traction at about $30-$35 per share, on which basis United Light's investment in the preferred and common would work out at $50-$57,000,000. Proceeds would also be applied to elimination of remaining bank loans of Continental Gas & Electric and United Light & Railways. Such elimination would probably permit ending of the SEC restriction on dividends to $1 per share. After the above transactions, the

system would still retain some $30-$35,000,000 working capital, which might be used for further retirements or refundings, or for purchase of new properties and plant additions.

Bear, Stearns & Co. has prepared a memorandum on *Indianapolis Power & Light Company*. At the recent price around 27 the stock is selling at 14.3 times earnings (below the usual ratio) and the yield is 4.4 per cent. The earnings of $1.90 for the twelve months ended September 30, 1945, were, it is pointed out, after plant acquisition adjustment amortization of 30 cents a share, amortization of debt discount of about 35 cents a share, and depreciation allowance based on 3 per cent of original cost of depreciable plant, which is in excess of the deduction for tax purposes. If the company had followed the practice of other companies by stating its depreciation at about 95 per cent of the amount claimed for income taxes, some 35 cents more could be added to reported earnings. The company, in the September 30th period, accrued $4.34 per share in income taxes, and on the present tax basis earnings would have increased to $4.25—providing "a substantial cushion against a recession in industrial sales, reduced rates, and/or wage increases."

THE company has a substantial cash position due to its conservative dividend policy and heavy depreciation and amortization. This policy will aid the company to meet, probably without financing, the heavy construction program together with note maturities in 1946-47. The company's 3¼s bonds and 5¼ per cent preferred stock might be refunded for a net saving of about 29 cents per share on the common stock, Bear, Stearns concludes.

While the company's residential rates and usage approximate the national average, and rates compare reasonably with other utilities in the state, reductions in schedules appear likely. Last year the company earned about 6 per cent on book value. While the stock equity is rather low, this is being built up as physical property replaces intangible assets.

Walston, Hoffman & Goodwin (San Francisco) has recently prepared special memoranda on Federal Water & Gas, Laclede Gas Light, and California Electric Power. *Federal Water & Gas*, it reports, has made considerable progress with its integration program. Its interests in West Virginia Water, Ohio Water, and Peoples Water & Gas were sold last year; Alabama Water is being liquidated. Scranton-Spring Brook currently is being recapitalized and Federal's interest will be sold later. SEC permission has been asked to sell the common stocks of Mississippi Gas and Chattanooga Gas to Southern Natural Gas, in which Federal has a 54 per cent interest. (This would be financed by Southern through issuance of rights to stockholders.) Later Federal would distribute its interest in Southern to its own stockholders.

Federal (as of the date of the memo) was selling at 23 and its equity in Southern Natural Gas (at 24¾) would be about $21.28 per share, after completion of the above program. Including Federal's cash equity, it had a liquidating value of about $26 so that it was cheaper than Southern, according to this analysis.

LACLEDE GAS LIGHT, according to the memo issued by Walston, Hoffman & Goodwin, has gone through an 8-year period of rehabilitation and it may require another year or so before results of this campaign are fully attained. Rates have been reduced, and with greater use of household gas appliances increased sales volume is expected. Further reduction in the wholesale cost of natural gas would permit added adjustment in rates, and greater consumer usage. While working capital is now ample, dividends are expected to remain on a conservative basis for the present.

California Electric Power has continued to show a substantial increase in power output and revenues—8.7 per cent in the month of November—despite some loss of military business, lack of electrical household appliances, and delayed new building. Use of the desert areas in California and Nevada served

by the company for military experiment and testing grounds is expected to increase. California Electric's Mexican subsidiaries are also doing well, earnings from this source amounting to about 14 cents a share on the new stock basis. Refunding savings are foreseen when the 3½s are refinanced. With all the prior preferred stock now converted or called, the company will have about 1,184,621 shares of common outstanding.

W. T. Hyde, Jr., utility analyst of Josephthal & Co., in his February utility review issued a word of warning about current methods of forecasting utility earnings, particularly for holding companies. "The strength in speculative holding company stocks over the past few months," said Mr. Hyde, "has been due to a large extent to estimates of sharply higher subsidiary earnings as a result of the elimination of excess profits taxes. More often than not, however, these estimates have been nothing more than mathematical computations adjusting 1945 earnings for 1946 taxes and allowing for savings in senior charges resulting from completed or possible refundings. Furthermore, the estimated earnings have been capitalized at liberal ratios which give little recognition to relative investment quality, and have been projected on the pyramided structures of heavily capitalized holding companies indicating large but unrealistic liquidating values for their junior securities."

Mr. Hyde also feels that higher costs and rate reductions, together with reduced industrial sales, may go far toward offsetting the big savings anticipated.

The Josephthal review also commented on Central & South West Utilities, Electric Power & Light, and Utah Power & Light. An ultimate value for Electric Power & Light of 30 was forecast. Utah Power & Light was considered to be attractive for income and modest future appreciation possibilities. Appreciation possibilities in Central & South West were considered to be rather limited.

Bank Loans to Utility Companies

During the past two or three years, "term loans" by large commercial banks to electric utility companies have become increasingly popular. In the old days, loans were limited to short-term paper, as a rule. The experiences of some of the New York and Chicago banks with collateral loans on stocks held by holding companies or their officials proved unfortunate—some of the Insull loans, for example, remained frozen for years. Recently, however, the plethora of bank funds has resulted in the resumption of intermediate-term loans both to operating and holding companies in connection with refunding or integration programs. Many of these loans run serially for a 10-year period, and are much sounder than the promotional type of loans made in the 1928-30 period.

Some months ago the Continental Illinois National Bank & Trust Company of Chicago issued a 78-page brochure by William G. Olson on "Factors to Be Considered in Making Bank Loans to Electric Utility Companies." This study discusses a large number of topics of interest to bankers, under these chapter headings: business and territory, competition, outlook for growth, franchises, source of power and properties, indenture provisions, depreciation, financial yardsticks, other financial aspects, and state and Federal regulatory control.

Under "business and territory," Mr. Olson discusses the type of service rendered, classes of customers, population trends, customer density per pole mile of line, purchasing power in the area, and industrial activity. Under "competition," he analyzes the growth of municipal and government ownership, the areas in which public ownership is particularly strong, and the resulting threat to private companies.

Under "outlook for growth," he suggests studying the trend of sales data over a 10-year period—the number of customers, annual kilowatt-hour usage, average revenue for kilowatt hour, and average annual revenue per cus-

tomer. These figures should be tabulated for each class of customers—domestic, industrial, commercial, rural, etc. The results should be compared with the combined averages for all companies contained in the annual statistical bulletin of the Edison Electric Institute, and also the averages contained in the annual statistical volume of the Federal Power Commission. The comparisons might also include the block schedule rates issued by the FPC for cities of 2,500 population and 50,000 population.

Mr. Olson comments on the function of the industrial load, which helps to spread electric operations over the 24-hour period, rural development possibilities and REA competition, the merchandising of appliances, the importance of public relations, and the labor situation. He summarizes the history of labor unions, particularly since passage of the National Labor Relations Act of 1935, which made company unions illegal unless they had the voluntary support of employees (although a number of such unions have continued to exist). According to government estimates, about half of all employees in the electric power industry are working under union contracts. The industry is not handicapped as greatly as many other industries by wage increases, because of the relatively low proportion of the revenue dollar expended for wages.

Under "franchises," the importance of local agitation for municipal ownership at the time when a franchise is coming up for renewal is discussed, although such agitation is much less intense now than during the period 1930 to 1935.

IN the chapter on "source of power and properties," it is suggested that the proportion of the company's requirements available through its own plants, the amount purchased from other utilities, and the proximity of generating plants to the consumer market should be studied. Company plants should be studied with respect to type, location, age, rated capacity, and recent yearly output. The relative trend of United States generating capacity and production for steam, hydro, and internal-combustion plants during the period 1920-43 is analyzed by Mr. Olson. The average steam plant load factor in 1943 was 48.5 per cent of installed capacity, compared with 59.9 per cent for the average hydro plant. Other topics discussed are power interconnection and interchange agreements, budgetary forecasts of power and the construction program, physical condition of properties, and fuel efficiency.

The 1943 operating results of 21 leading companies with respect to efficiency of fuel-burning plants (BTU per kilowatt hour generated) are tabulated, these data having been obtained from the reports filed by these companies with insurance companies. The study points out that, based on nationwide averages, it now takes about 1.3 pounds of coal to generate one kilowatt hour, or about one-third of the amount required twenty-five years ago. However, the most efficient steam plants still only convert about 31 per cent of the available heat in coal into electric power. Other methods of generation such as Diesels, gas turbines, etc., may promise greater economy in the future.

Under "depreciation," the study discusses the various methods used, and the tests to be applied to determine the adequacy of depreciation and maintenance charges. It is suggested that the percentage of operating revenues appropriated for (1) depreciation, (2) maintenance, and (3) the combined amount, should be tabulated for a 6-year period and compared with the corresponding figures for all operating companies as compiled by the FPC. Important factors are the relative proportion of hydro power, the amount of wholesale power sold, etc.

IN the chapter on "financial yardsticks," the author discusses the eight standard ratios: (1) times fixed charges earned; (2) long-term debt to net property; (3) operating expenses to operating revenue; (4) net property to operating revenue; (5) depreciation and maintenance to operating revenue; (6) gross income to long-term debt; (7) net operating income to net property; (8) net

income to operating revenue, and Federal income taxes to operating revenue.

These ratios are worked out for three groups of companies on a 6-year average basis (steam companies, combination steam and hydro, and hydro), and the resulting averages are compared with the "ideal" figures for steam, retail hydro, and wholesale hydro. A detailed discussion of each ratio follows, with an indication of its importance in studying bank loan policy. In connection with ratio 7, net operating income to net property (mentioned above), Mr. Olson states "the general consensus points toward a maximum return of around 7 per cent, which includes some allowance for 'going concern value.'" This figure would seem rather high under present conditions, except in states like Texas which have liberal regulatory standards.

Under "other financial aspects," the topics considered are accounting procedure, working capital, cash forecast, valuation of plants and other facilities, capital structure, and allowable rate of return. The chapter on "state and Federal regulation" contains a table showing the scope of state commission regulation of privately owned and municipally owned electric utilities. Appendices discuss markets for electric power and the future of the industry.

The book furnishes an interesting financial summary not only for bankers, but for executives, economists, and students of the industry.

Exchange Authorized

UNITED GAS IMPROVEMENT COMPANY'S plan to exchange its portfolio holdings in four public utility holding companies for shares of its outstanding capital stock was approved in an unanimous ruling of the Securities and Exchange Commission.

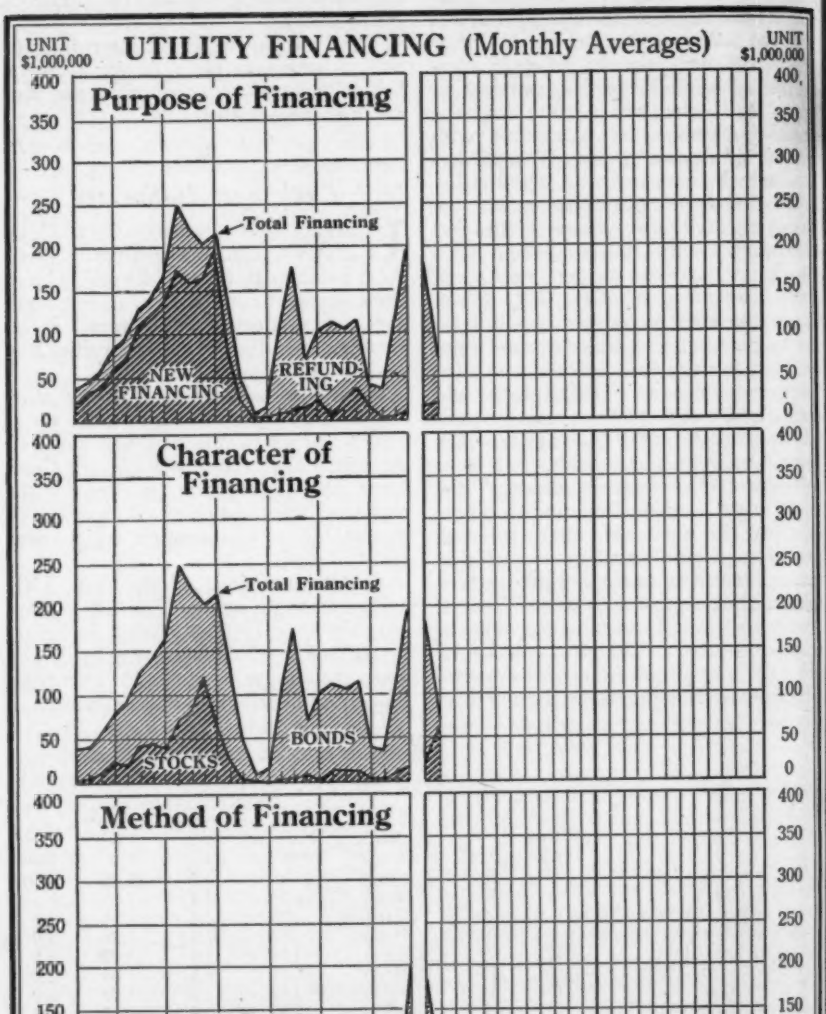
Simultaneously the commission sanctioned UGI's proposal to acquire up to 12,000 shares of the common stock of American Water Works & Electric Company, Inc. These shares, needed for the exchange, are to be obtained from UGI's parent, United Corporation, which owns 606,622 shares.

Under provisions of the plan, UGI will exchange up to 750,000 shares. If more than 750,000 shares, including 606,620 of the shares now held by United Corporation, are tendered for exchange, a pro rata distribution will be made.

MANUFACTURED GAS COMPANY STOCKS

	Where Traded	*Price About*	*Latest Earnings*	*Previous Earnings*	*Price-Earn. Ratio*	*1945 Div.*	*Yield About*
Bridgeport Gas Light	C	28	$1.46(a)	$1.48	19.2	$1.40	5.0%
Hartford Gas	O	45	2.10(a)	2.26	21.4	2.00	4.4
Brockton Gas Light	O	16	.73(a)	.70	22.0	.75	4.7
Providence Gas	C	10	.47(a)	.53	21.3	.50	5.0
Haverhill Gas Light	O	28	1.79(c)	1.70	15.6	1.40	5.0
Springfield Gas Light	O	31	1.84(a)	1.42	16.8	1.60	5.2
Fall River Gas	O	36	2.26(c)	2.12	15.9	1.80	5.0
Portland (Maine) Gas Light	O	11	1.22(b)	1.55	6.7	.75	6.8
Brooklyn Union Gas	S	33	2.79(b)	2.73	11.9	1.60(d)	4.8
Birmingham Gas	O	9	1.34(e)	1.36	6.8	.60*	6.7
Savannah-St. Augustine	O	19	1.42(a)	1.45	13.4	1.00**	5.3
Jacksonville Gas	O	28	2.86(a)	2.56	9.8	1.25	4.5
Averages					15.1		5.2%

S—Stock Exchange. C—Curb. O—Over counter. *Payments irregular (60 cents in 1943, 30 cents in 1944, and 60 cents in 1945). **Thirty cents paid in first quarter of 1946. (a) Twelve months ended December 31, 1944. (b) Twelve months ended December 31, 1945. (c) Twelve months ended January 31, 1946. (d) Quarterly rate raised from 25 cents to 40 cents November 1, 1945, (e) Twelve months ended September, 1945.


UTILITY FINANCING (Monthly Averages)
UNIT $1,000,000
UNIT $1,000,000
Purpose of Financing
Total Financing
NEW FINANCING
REFUNDING
Character of Financing
Total Financing
STOCKS
BONDS
Method of Financing
Total Financing
PUBLIC OFFERINGS
PRIVATE SALES TO INSTITUTIONS
400
350
300
250
200
150
100
50
0
1919 '22 '26 '30 '34 '38 '42 '45 J FMAMJ JASONDJ FMAMJ JASOND
1944
1945

What Others Think

Interior Department Official Talks About "Cheap Power"

THAT the power policy announced recently by former Secretary of Interior Ickes (see page 167, January 31st issue of FORTNIGHTLY) is not a "mere form" is well illustrated in recent addresses of certain officials of Federal agencies active on its power projects.

Because of the impact this ever-widening public power program has upon the business-managed electric companies, we quote below extracts from these statements, which indicate the implementation of this power policy, and suggest definite plans to construct many more generating plants—steam-electric as well as hydro—and to promote the transmission, over large areas, of "cheap power."

The address of Michael W. Straus, formerly Assistant Secretary of the Interior Department, now chief of that department's Bureau of Reclamation — at the convention of the National Reclamation Association, late last fall in Denver —casts considerable light upon the important place given by the bureau to hydro-power developments in connection with its irrigation projects.

In his address—"Perspective on Low-cost Water"—Mr. Straus said in part:

> For those who are willing to look, it is not hard to find the perspective on our program. It is reflected clearly in the Reclamation Laws of this nation.
>
> There you see, laid out for you like the image in your rear-vision mirror of the road over which you have driven, the path by which Reclamation has attained its present stature. Several recent chapters have been written. All of them to date have the objective of cheap water . . .

AFTER reference to the Federal Reclamation Laws, and their bearing upon this guiding principle of low-cost water, the speaker dwelt at length upon the "utilization of cheap power possibilities" in irrigation developments, stating:

> Perhaps the greatest development to bring low-cost water was the arrival of the multiple-purpose project, made necessary by the completion of the possible simpler irrigation projects on the limited waters of the West and made mandatory by the advent of the electrical age. The multiple-purpose project, and now the development of the resources of whole valleys on a comprehensive basis, brought many more benefits to which might be charged the cost of construction....
>
> But the most spectacular servant of the cause of low-cost water for the irrigationists was the utilization of the cheap power possibilities of the Federal irrigation works. This opened a whole new reclamation era....
>
> This is dramatically true on the Colorado river, where the entire cost of Boulder dam, the key to the control of the river, is met with interest by the revenues from the sale of power. It is true, also, in the Columbia basin, where the cost of Grand Coulee dam plus two-thirds of the costs of the irrigation system are to be repaid by power....

These benefits are the result, Mr. Straus said, "not just through power alone but through abundant cheap power . . . Without cheap power we cannot hope to find the vast power markets that must develop to justify the multiple-purpose hydro projects." He stated:

> . . . We cannot provide cheap power unless we protect and police those Federal kilowatts all the way down the line and see that they are delivered to the consumer without a lot of mark-ups in price for private profit, just as you insist that we protect and police the Federal acre-feet to the irrigationist who frequently turns out to be the one and the same person as the kilowatt consumer. And we cannot deliver abundant low-cost power to the consumers unless we have transmission lines over which to send those kilowatts that are serving the cause of low-cost water.
>
> New transmission lines are required to carry new reclamation power to new consumers—largely irrigationists. Those lines

must be dedicated to the purpose of delivering plentiful and low-cost power and not monopolized and operated for a dozen other recognized purposes having no relation to irrigation, including the return of additional handsome dividends to receptive absentee stockholders a few thousand miles away. . . .

The Reclamation Bureau has already made requests of Congress for appropriation of funds for the construction of transmission lines on its Central Valley (California) irrigation project. It has also campaigned actively in California in an endeavor to secure contracts with several communities for the use of its power—a use which has no connection with irrigation.

These statements of Mr. Straus seem to set forth quite clearly the objectives of the Reclamation Bureau with respect to "cheap power," and its intention to construct and operate its own transmission facilities.

At a conference of the California Water Resources Council, held in Sacramento last December, addresses were presented by former Commissioner Harry W. Bashore of the Bureau of Reclamation and Chairman Leland Olds of the Federal Power Commission. These addresses dealt largely with the uses of water resources in the Central valley in that state.

It is of interest to note that emphasis was placed by each of these officials of government agencies upon the importance of "low-cost" electric power in the carrying out of the various conservation measures contemplated. In fact, it was made clear that, in the opinion of these speakers, the successful accomplishment of the Central Valley project depends in great degree upon the wide marketing of "cheap power" from its multiple-purpose dams.

As an indication of the far-reaching plans contemplated for this project, Mr. Bashore stated that the initial stage, upon which $160,000,000 has already been expended, is estimated to cost between $350,000,000 and $400,000,000. The second stage, now recommended for authorization, will require about fifteen years to complete. It involves 30 major projects totaling in cost about $527,000,000. The third stage of construction, to be undertaken when projects are needed and funds available, will involve 36 additional projects at a total cost of some $900,000,000.

In calling attention to the Federal expenditures involved for the state of California—a total of $1,800,000,000—the commissioner commented that "this is two and one-half times as great as all the money that has been spent by the TVA Authority, and almost twice what has been invested by the Bureau of Reclamation in all of our 17 western states in its forty-three years of successful operation."

There is vivid suggestion, in this comparison of expenditures on river basin projects, that with the passing years vastly increased sums are proposed to carry out the plans in view for extensive Federal developments in connection with our water resources. And, as Mr. Bashore pointed out, this means sizable additions in "public power" to both hydro and *steam* capacity in this country. Referring to Central Valley he said:

> About one-third of the hydroelectric power generated will be used for pumping irrigation water. It is clear, therefore, that there is a direct connection between the cost of water delivered on the land and the cost of electric current. Unless there is low-cost power there cannot be low-cost irrigation water for most of the valley, although a few especially favored areas might benefit by local conditions.
>
> The comprehensive plan includes 28 power plants at multiple-purpose reservoirs and after bays, which would increase the capacity of hydroelectric plants in the basin by 1,697,000 kilowatts. These together with 750,000 kilowatts in supplementary steam plants, needed ultimately to firm the hydroelectric output in dry years, would aggregate 8,100,000,000 kilowatt hours of firm power annually.

After dwelling at considerable length upon the benefits he envisions to California as a result of the irrigation development proposed for Central Valley, Mr. Bashore made it clear that "power is the key to (its) success." He said:

. . . Reclamation development is sound business. Multiple-purpose projects are self-liquidating when wisely constructed and operated and revenue from water charges and disposal of electricity will return to the Treasury virtually all that is expended. In this connection it should not be overlooked that the power development within the Central valley is the key to success in the economic problem.

While almost nine-tenths of the direct benefits of the ultimate development will be derived from irrigation, it appears now that irrigation interests will be required to repay only about 40 per cent of the construction costs. Revenue from the disposal of power, and allocations to flood control and other purposes, will account for the remaining 60 per cent of construction costs. Without the large returns from low-cost power, and the consequent self-liquidation of the project, it seems to me very probable that the Congress may be quite reluctant to undertake the project—at least at this time.

CHAIRMAN Olds told the meeting that the Federal Power Commission's policy with respect to water resources, and more particularly hydroelectric power, embodies a dual approach. He said:

. . . It conceives the development of power, not as an end in itself, but as a means to an end. We recognize that power is valuable only as it is freely utilized; that utilization is limited unless rates are at the lowest possible levels; that low-cost power in abundance will create its own market; and that, in creating a market, it will prove a major stimulus to the expansion of the regional economy and to a fuller life for the entire community. . . .

An evaluation of the potential gross benefit to be derived from the development of low-cost power at multipurpose projects might well provide a clearer indication not only of its relative importance but also of the combined contribution which irrigation and power will make to the expansion of the regional economy.

Estimating the water-power resources of California feasible of development at about 3,500,000 kilowatts, and that such development would be associated with steam-electric capacity of about 2,000,000 kilowatts, Mr. Olds said:

The additional 5,500,000 kilowatts of economical electric power should bring about an investment of perhaps $3,500,000,000 in new industrial plants, employing some 550,000 workers. On the same basis, this expansion in power supply would directly and indirectly provide support for an additional population of about 2,750,000, in addition to the added population for which the completed irrigation program is expected to provide a sound basis. The combination would assure a sound economy in which agriculture would gain the advantage of a largely expanded local market for its products.

Then, turning to the regional development of hydro power and its widespread transmission, the chairman indicated an FPC policy on this question which contemplates extended Federal public power transmission systems to carry the output of Federal generating plants, both hydro and steam-electric, over large areas. In this connection, he said:

. . . But I want seriously to raise the question whether your energy resources will prove sufficient for the full development of a balanced economy if your program is conceived entirely in intrastate terms. And I can assure you that the Federal Power Commission, under its authority to encourage interconnection and coördination of power facilities, is considering the ultimate integration of power supply over larger areas.

So I think that, even assuming the ultimate feasible development of hydroelectric power as part of your water resources program, your planning cannot safely assume that California will remain self-contained so far as its energy requirements are concerned. From the point of view of the building of the great balanced economy which your state is capable of sustaining, you will in all probability become increasingly a part of an interconnected energy economy embracing the remarkable hydroelectric resources of the region which extends from the Columbia basin on the north to the Colorado basin on the south.

REFERRING to the water-power potentialities in the western 11 states' region, Mr. Olds stated:

As compared with the present total of about 9,000,000 kilowatts of hydro and steam-electric power, installed in the generating stations of this great region, your rivers offer you the possibility of an ultimate 50,000,000 kilowatts of additional power. As against a 1944 output of 44,000,000,000 kilowatt hours, your rivers can add an ultimate total of perhaps 280,000,000,000 additional kilowatt hours. These are ultimate potentials—limits within which your regional plans for a year or a decade or a generation can be worked out—to be augmented by the best correlative use of steam stations utilizing the fuel resources of some of the states.

He then added that the Federal Power Commission's thinking on the contribution which power, as a part of the multipurpose river basin programs, can make to the country's postwar development is along regional lines in general. He continued:

> Because decentralization of industry and population is important, in terms of defense in an atomic age, as well as in terms of national well-being, we are particularly interested in the contribution which widely distributed power can make to the development of balanced economies in those areas which have fallen behind in industrial development. We know that this will prove to the ultimate advantage of all.
>
> Our work in this field is under definite authorization contained in primary provisions of the Federal Power Act, supplemented by the Flood Control acts and other river basin legislation. And, while we coöperate fully with other Federal agencies, our authorization is independent of such coöperation. Consequently, we are in a position to offer state agencies, which are working on well-rounded plans of development, the fullest possible coöperation in their work.

THE statements of these two government officials, whose agencies are so closely identified with Federal power activities, leave no doubt as to the definite program they have in view for extensive developments in the power field. This coincides with the public power policy recently announced by the Interior Department.

Interior already claims to operate the largest hydro capacity in the world under one single control. Now, with their plans for far-flung transmission systems, they are advocating the addition of *steam-electric* plants to this generating capacity.

It is plain from their statements that these Federal public power projects will have much surplus energy for disposal. The sale of this will come into direct competition with established business-managed electric utilities.

It would seem natural to ask: "Do the people now served by these business-managed companies want Federal public power substituted for their present service, at the unnecessary cost of billions of dollars to the taxpayers of all the country?"

—R. S. C.

Vast Electric Power Empire Disclosed in Interior's Latest Annual Report

THE United States Department of the Interior has many important government agencies under its administration. Established almost one hundred years ago, the department's principal functions have long been conducted by the Bureau of Mines, the Geological Survey, the Bureau of Reclamation, the General Land Office, the National Park Service, and the Office of Indian Affairs. While several other agencies have also been under its administration, those named probably have been more familiar to the general public.

In the past few years, however, marked changes have taken place in the scope of Interior's activities, greatly extending its field of operations. Its most outstanding move has been its entry into the electric power business, in the construction and operation of hydroelectric projects, in connection with the irrigation works of its Bureau of Reclamation, its Bonneville and Southwestern Power administrations, and in the marketing of energy generated at plants operated by the U. S. Corps of Army Engineers.

The extent of the Interior Department's activities in the electric power field may be realized from its announcement, in its annual report for 1945, that it is now "operating and marketing power from the largest aggregate of hydroelectric capacity in the world." "Hydro power" looms large in the minds of Interior's officials, as may be noted in glancing through this latest annual report. The then Secretary Ickes' introduc-

"EVER SINCE EVA DROVE FOR THE BUS COMPANY DURING THE WAR, SHE'S GOTTEN INTO THE HABIT OF STICKING HER ARMS THROUGH HER COAT SLEEVES"

tory letter dwelt upon it at length, and the initial 70 pages of the report itself are devoted to this subject. In the present book of 315 pages, it is noticeable, in contrast to former years, that details regarding the long-established Bureau of Mines and Geological Survey are relegated to secondary place. The "power" business has become Interior's chief activity.

THE entry of the Interior Department into the power business is a matter of special import to the electric utility industry. This is true not only with respect to its present power operations, but because of its far-reaching plans for the installation of additional capacity on a vast scale. To carry out these plans, and also to develop a market for the huge amount of power, formerly going to war industries, now surplus, the directors of the department's various power divisions have launched ambitious promotion campaigns, which the report described in considerable detail.

These promotion programs are based upon a policy which envisions "regional" developments on an almost unbelievable scale. Mr. Ickes' introductory letter of transmittal to the President discussed this policy. He called it "the kind of logical next step in conservation that mass production was in production." Further, he declared, "these administrations should clear to the President

through the Secretary of Interior. This department has had more experience than any other in this type of administration."

As to Interior's power production, this statement is made:

> At the outbreak of the war we faced a critical shortage of power with which to meet the huge demands of rapidly increasing war production. . . .
>
> How the nation overcame that power deficiency is one of the stirring chapters in the history of the war. Our production of electric energy was stepped up to unprecedented levels, and the major contributors to that greatly increased output were the hydroelectric plants of the Bureau of Reclamation in the West—the plants at Grand Coulee, Boulder dam, and elsewhere.

The installed capacity, as of June 30, 1945, of all the plants from which Interior agencies market the energy, is given as 3,107,300 kilowatts, with 18,000,000,000 kilowatt hours generated. The growth of its "power business" is indicated in the statement that this is five times the production of all the power plants under Interior's jurisdiction in 1940.

Plans for more than doubling the present capacity are under way. The Secretary commented:

> The Flood Control and the River and Harbor acts placed additional responsibilities upon the division. They directed the Secretary of the Interior to dispose of the power that is generated at the dams constructed by the Corps of Engineers. The ultimate installed capacity of these authorized projects will be more than 7,200,000 kilowatts.

And the department's policy as to marketing power is thus set forth:

> In preparing for the transition to a peacetime economy, while meeting the needs of war, studies have been undertaken in order that the power that is under the jurisdiction of this department may be disposed of in accordance with the policy that the Congress has forged during the past four decades—that is, in such a manner as to encourage the most widespread use at the lowest possible rates to consumers, consistent with sound business principles, and with a preference to public bodies and coöperatives. Consideration is also being given to the problem of the integration, with our Federal power projects, of fuel-operated generating plants that were built to serve some of our large military establishments and war plants.

WHILE the Secretary's letter of transmittal gives a hint of the plans envisioned for Interior's power developments, it is only by reading the full reports of its several agencies that one becomes aware of the Federal public power empire which looms in the projects already under way and proposed.

The report of the Bureau of Reclamation, under the heading "Postwar Plans to Develop the West," says in part:

> While pushing its programs to aid in winning the war the Bureau of Reclamation also laid a solid foundation for a program to meet the problems of peace. This program was presented to the Congress in April in the form of an inventory of 415 irrigation and multiple-purpose projects which the bureau is prepared to undertake in further developing the resources of 17 western states and to provide jobs and farms for thousands of returning servicemen and demobilized war workers. . . .
>
> The cost of constructing these projects—those authorized and those under study—is estimated at close to $5,000,000,000, based on 1940 costs. The estimated construction cost to complete projects already authorized by the Congress is $1,337,701,000. . . .
>
> Power plants on bureau projects now have an installed capacity of 2,439,300 kilowatts, with a total output in 1944 of nearly 14,000,000,000 kilowatt hours. The postwar program calls for increasing the capacity of present plants to 4,863,000 kilowatts principally by adding generating units for which space was provided in original construction. Additional installations in the postwar inventory call for the addition of generating units which would give Bureau of Reclamation plants a total capacity of 9,324,000 kilowatts.

To illustrate the allocation of these projects by states, with the capacity and cost of power installations, the table on page 443 is taken from the report. It is headed, "A summary of the bureau's postwar inventory of projects."

In carrying out Interior's policy of building its own transmission facilities, the bureau report stated that "a total of 144 miles of transmission lines was completed and construction of an additional 308 miles was in progress."

Ten pages are devoted to details of the work under way and in prospect in each

of the seven regions in which the Reclamation Bureau's activities are carried on. Power developments occupy an ever-increasing place in all of these projects. These "region" statements are revealing of long-range plans proposed to be carried out at a cost of billions of dollars. The scope of them is far-reaching, and these statements should be read, if one wishes to get a clear conception of what this one Interior agency contemplates in extending its power domain in 17 western states.

As to the Bonneville Power Administration, the then Secretary stated:

> Initially, the function of the Bonneville Power Administration is regional development; its final objectives are social and economic progress. The mechanism by which these ends are to be achieved is the marketing of an inexhaustible natural resource—Columbia river hydroelectric power.

In the 20 pages of the report devoted to the activities of this agency, under the heading, "The Fourth War Year," are these statements:

> In fiscal year 1945, as in 1944, the Northwest plants produced more than one-third of the nation's entire aluminum output. Aluminum produced with Columbia river power contributed greatly toward the establishment of United States air supremacy in the European and Pacific battle areas. . . .
>
> Of even greater importance to final victory in World War II was the contribution made by Bonneville-Grand Coulee power to the development of the atomic bomb. The location of the Hanford Engineer Works in the Pacific Northwest was determined to a considerable extent by the availability of large quantities of hydroelectric power and water from the Columbia river . . . the Bonneville Power Administration was able to provide large quantities of power to the Hanford project with the highest possible degree of reliability, a prime requisite to successful production of the atomic bomb.

"Industrial and resources development" is given considerable attention, the administration stating that analysis of its war loads indicates that a maximum of 600,000 kilowatts, approximately 50 per cent of its capacity, may become available for remarketing. The report continued:

> Confronted with this possibility, the administration is devoting considerable effort to the formulation of an extensive program of market and system development designed to provide markets for surplus power as quickly as possible, and to assist in retaining the Pacific Northwest's wartime industrial

		Irrigation		*Power*		
State	*Number Of Projects*	*New Lands*	*Supplemental Water*	*Installation Authorized Projects*	*Estimated Firm Projects under Study*	*Over-all Remaining Costs, 1940 Prices*
		Acres	*Acres*	*Kilowatts*	*Kilowatts*	
Arizona	19	383,050	602,800	225,000	1,877,200	$1,268,219,000
California	37	2,233,900	4,475,000	686,500	627,400	836,494,000
Colorado	21	797,385	1,981,740	144,900	574,000	525,017,000
Idaho	22	319,180	1,163,715	100,500	138,620	190,142,200
Kansas	11	202,948	674	—	—	78,322,000
Montana	96	1,127,526	294,500	252,000	31,000	265,273,000
Nebraska	16	337,922	57,430	2,000	75,000	77,955,000
Nevada	13	67,100	110,500	—	16,000	39,609,000
New Mexico	14	132,770	194,380	—	102,400	143,626,000
North Dakota	14	1,214,805	—	139,750	—	137,438,500
Oklahoma	11	187,000	600	—	—	39,184,000
Oregon	21	468,515	167,500	—	7,800	97,353,200
South Dakota	11	934,690	25,300	143,000	600	125,406,000
Texas	13	442,530	430,270	18,000	—	135,797,000
Utah	23	100,760	272,969	8,600	124,700	181,472,000
Washington	5	1,116,000	252,000	852,000	622,000	411,488,000
Wyoming	68	743,000	587,700	40,000	75,000	239,576,000
Total	[1]415	10,809,081	10,617,078	2,612,250	4,271,720	$4,792,371,900

[1] Total includes individual units of some major projects. Miscellaneous projects not included.

gains. The marketing program is directed toward the development of new power markets in industries that will directly or indirectly provide jobs for returning servicemen and displaced war workers.

This development program is an extensive one, including many industrial reports and economic surveys, all to the end of promoting more use of public power in the Pacific Northwest. In its industrial contact activities, Bonneville's efforts have spread over the country, as this extract from its report indicates:

> In carrying out the Bonneville Power Administration's industrial research and development programs, contacts have been made with leading industrialists and businessmen throughout the country.
>
> Through these contacts valuable information on the Northwest's resources and market potentialities has been made available to industries in all sections of the country, many of which are looking to the Pacific coast as the last industrial frontier.
>
> Bonneville's industrial contact program has been directed to a large extent toward the fields of electronics, electro-process industries, and other industries in which low-cost power is an important element.

Promotion was further carried on through coöperative research projects, regarding which the report says in part:

> As a part of the program for developing use of power in the Pacific Northwest, particularly for farm use and electric house heating, a program of coöperative research with colleges and universities in the Northwest was initiated by the administration during fiscal year 1945.
>
> Funds utilized for this research program were those provided by the Congress for advanced marketing activities. . . .
>
> The total maximum obligation for all of the studies to be undertaken will amount to $63,528.

As to power sales, the following extract from the Bonneville report is illuminating, both as to the large proportion of energy which was war load, and the substantial amount delivered to private utilities as compared to public utilities, which are favored in power disposal:

> During fiscal year 1945 approximately 86 per cent of all energy generated at the Bonneville-Grand Coulee plants was delivered either directly to war industries and military establishments or to other utilities to enable them to serve such loads. . . .
>
> The Bonneville Power Administration delivered 8,500,000,000 kilowatt hours of electric energy to 80 customers during this last year. Of this total, 824,000,000 went to publicly owned utilities, 2,057,000,000 to privately owned utilities, and 5,632,000,000 to industries and military establishments.

In keeping with Interior's power policy of giving preference to publicly owned utilities and coöperatives, the report makes this interesting comment:

> The public agencies distributed low-priced Bonneville power under the best American business tradition of delivering it at the lowest possible cost to the ultimate consumers.

It is also noted that, during 1945, "the Bonneville and Grand Coulee power plants supplied approximately 50 per cent of all electric energy consumed in the five northwestern states of Washington, Oregon, Idaho, Montana, and Utah."

A feature of Bonneville's plans is a widespread extension of its high-tension transmission system. It built 149.8 miles of lines in the first fiscal year. An indication of what is contemplated is found in this paragraph from Ickes' introductory letter:

> A program of system development, which was formulated by the branch of engineering and operations, contemplates the early investment of approximately $164,000,000 in new transmission facilities designed to bring low-cost power from existing and proposed Columbia basin projects to farms, homes, and industry throughout the region. The new facilities will enable the Bonneville Power Administration to bring power into power-deficient areas, and will make Columbia river power available to any point in the Northwest at the Bonneville standard wholesale rate of $17.50 per kilowatt year.

The Bonneville report closes with statements as to the Columbia basin cost allocation report, and a similar one on the Bonneville dam.

THE power business of the Interior Department carried in this annual report includes that of the Southwestern Power Administration. This agency operates the Grand River dam in Oklahoma, and markets its power, as well as

that of the Norfork dam in Arkansas, and the Denison dam in Texas, both of which are operated by the Army Engineers. Electric energy has been marketed from these plants to private utility companies and to war industries.

This agency also has far-reaching plans in view for wide transmission line extensions to effect, the report stated, "coördinated operation," and to serve a much larger area than at present. It added:

> Coördination of operations between the three projects has been impossible during the war because the government does not own the necessary interconnecting transmission lines, and some of the private companies, whose lines do not interconnect the projects, have been unwilling to make agreements for the interchange of power and mutual use of facilities.

An indication of the scope of these plans is given in this further extract:

> The Flood Control Act of 1944 has made it necessary for the Southwestern Power Administration to plan an extensive program of transmission line construction for interconnecting hydroelectric projects in the Southwest and marketing their output. The conclusions and recommendations are included in a report to the Secretary entitled "Report on Comprehensive Plan of Power Distribution and Sales from Hydroelectric Projects As Authorized by the Flood Control Act, December, 1944 (HR 4485), in the Southwestern Region — Arkansas, Oklahoma, Texas, Louisiana, Southeastern Kansas, Southern Missouri."

While Interior's annual report does not go into detail regarding these Southwestern transmission plans, the following extract from the report on a comprehensive plan, above referred to, suggests a rather ambitious program is in mind, if Congress will give Southwestern the money to go ahead with it:

> . . . The initial step calls for development of a system to distribute and market power from the dams already constructed or authorized. These dams have an aggregate total capacity of 666,600 kilowatts. To distribute and market the power adequately will require the construction of approximately 8,400 miles of transmission lines and the construction of approximately 210,000 kilowatts of supplemental steam-generating capacity over a period of five years, within which the entire electric output of the dams could be absorbed. If additional projects under study by the War Department are authorized, resulting in an ultimate installed hydroelectric capacity in the system of 1,397,600 kilowatts, it will be necessary to construct a total of approximately 15,000 miles of transmission lines and 770,000 kilowatts of supplemental steam-generating capacity over a period of twenty years.

THIS annual report of the Interior Department for 1945 (labeled on the cover "Victory Edition") discloses a fund of information upon the operations of its various power agencies, and upon their proposed plans for extending their operations.

Not only has the growth of Interior's power business been noteworthy in the past five years, but the consummation of its proposed plans, as indicated by the extracts quoted from the report, will augment its operations very materially.

Executives of business-managed electric utilities will find this annual report instructive and illuminating reading. Copies of it may be obtained from the United States Government Printing Office, Washington, D. C.

¶ *". . . There is no Senator on this floor who is more friendly toward the purposes of the REA than am I. There is no Senator on this floor who has gone along with the REA further than have I so long as it has confined itself to its legitimate functions. The only objection I make is that there is now a tendency in certain groups in the REA and without the REA to utilize this money for the purpose of constructing generating plants, whether they are needed or not. I think some kind of a check should be put on the REA."*

—CLYDE M. REED,
U. S. Senator from Kansas.

The March of Events

Interagency Committee Established

A COLUMBIA Basin Interagency Committee, for the purpose of effecting the coördination of planning, construction, and administration for the multiple-purpose development program of the Columbia river basin and the coastal areas in the states of Washington and Oregon which drain into the Pacific ocean, has been established by the Federal Interagency River Basin Committee, it was announced this month. The Columbia Basin Interagency Committee will consist of one field representative each from the Federal Power Commission; Department of Agriculture; Department of the Interior; and the Corps of Engineers, War Department; and the Bonneville Administrator.

To assure coördination of activities and avoid duplication of effort, the Bonneville Power Administration will be represented on the committee and the members of the committee will represent their respective agencies in the activities of the Bonneville advisory board.

The governors of the states of Washington, Oregon, Idaho, Montana, Wyoming, Nevada, and Utah, which lie wholly or in part in the Columbia river drainage area, will be asked to designate jointly five representatives to attend the regular meetings of the committee for the purpose of keeping the members advised of the interests of the states in the plans or proposals under discussion.

Regular meetings of the committee will be scheduled once each month at such points within the basin as the committee may designate. These monthly sessions will provide the means through which the field representatives of the Federal agencies will effectively coördinate on the ground their activities among themselves and with those of the states, in the planning and execution of works for the control and use of the waters of the Columbia basin.

Especially important to the objectives of the committee is the inclusion of five representatives of the Columbia river states, the purpose of which is to insure that the local viewpoint on all problems will be given the fullest consideration. These representatives, serving as a link between the Federal agencies and the people of the basin, may take with them to committee meetings such advisers or consultants from the river states as they consider necessary for the discussion of any particular plan or proposal.

Reorganization Plan Accepted

ACCEPTANCE of the second alternative plan for reorganization of Portland Electric Power Company has been recommended to Federal Judge J. A. Fee by Estes Snedecor, special master. Under this plan, promulgated by the independent trustees, a value of $38,500,000 is placed on properties owned by PEPCO.

Broken down, it includes $31,000,000 for Portland General Electric Company, $6,500,000 for Portland Traction Company, and $1,000,000 for the Interurban Company.

Would Reimburse Treasury

A BILL to reimburse the U. S. Treasury for funds expended upon development projects of the Reclamation Bureau was recently introduced by Senator O'Mahoney, Democrat of Wyoming.

The O'Mahoney Bill (S 1881) would correct provisions of existing reclamation laws which divert such repayments into the Reclamation fund.

The latter practice has been attacked by members of the House Appropriations Committee as a subterfuge for getting Treasury funds into the Reclamation fund.

New Bonneville Schedules

REVISED wholesale power and energy rate schedules and general rate schedule provisions as submitted by the administrator of the Bonneville hydroelectric project of Washington and Oregon have been approved by the Federal Power Commission. The rate schedules, designated as Wholesale Power Rate schedules A-4, C-4, E-3, and F-3, and Wholesale Energy Rate Schedule H-3 are effective as of March 1, 1946, and supersede previous Wholesale Power Rate schedules A-3, C-3, E-2, Optional Wholesale Rate Schedule F-2, and Wholesale Energy Rate Schedule H-3.

The new schedules and provisions make no changes in rate levels but effect rearrangements and revisions in the terms and conditions under which the rates are to be applied. According to the order, they "represent a further development of the rate policy of the project heretofore approved" and "are in keep-

ing with the purposes of the Bonneville Act."

The Bonneville project is at the head of tidewater on the Columbia river about 42 miles east of Portland, Oregon, and in addition to other facilities has a power plant with an aggregate capacity of 518,400 kilowatts.

FPC Orders Rate Reduction

THE Federal Power Commission on February 28th announced its order and opinion directing Penn-York Natural Gas Corporation, with operating offices in Buffalo, New York, to reduce its wholesale rates for natural gas sold in interstate commerce for ultimate public consumption by $53,200 a year. The order applies to 1,550,000 MCF of gas estimated to be sold to Republic Light, Heat & Power Company, Penn-York's only customer company. Republic distributes gas in New York state.

Penn-York is ordered to file a new rate schedule for the transportation and sale of natural gas at wholesale which will reflect the rate reduction. The existing rate is 49.9 cents per MCF and the commission's order states that a commodity charge of 38 cents per MCF plus a transportation charge of $10,960 monthly will produce revenues which will compensate Penn-York in an amount to cover all necessary operating expenses, depreciation, taxes, cost of purchased gas, and a 6 per cent return on its investment. Accordingly, this revised 2-part rate shall be set forth in the revised rate schedule which will be effective on all bills rendered after March 15, 1946, provided the schedule is submitted in a form satisfactory to the commission.

Accounting Adjustments Approved

PROPOSALS of the Michigan Gas & Electric Company, Ashland, Wisconsin, to make accounting adjustments involving the elimination of $466,675 from its electric and gas plant accounts, have been approved by the Federal Power Commission. The amounts to be disposed of represent excesses of recorded cost over original cost, including common stock issued for franchises, write-ups in connection with property acquisitions, and other items capitalized in error.

Prior to the order announced on March 8th, the company had disposed of $741,528 excess by charges of $143,412 to earned surplus and $598,116 to capital surplus. Thus the total amount eliminated from the company's books since reclassification and original cost studies were originally filed will be $1,208,203. The order allows the company additional time to make further studies necessary to reclassify the amount of $3,907,869 remaining in Account 100.6, Electric Plant in Process of Reclassification.

Of the $466,675 involved in the commission's order, the company will dispose of $155,675 remaining in Account 100.5, Plant Acquisition Adjustments, Electric and Gas, by annual charges to Earned Surplus over a period of fourteen years beginning with the year 1945. The amount of $311,000 remaining in Account 107, Plant Adjustments, Electric and Gas, will be charged to Capital Surplus.

The Michigan Public Service Commission also has approved similar accounting adjustments.

Michigan Gas & Electric, a subsidiary of Middle West Corporation, is engaged in the sale of electric energy and manufactured gas in the state of Michigan.

Consolidated Hearing Fixed

THE Federal Power Commission recently announced it had fixed March 27th, in Washington, D. C., for consolidated hearing on three applications filed by Arkansas Louisiana Gas Company for permanent certificates of convenience and necessity to operate existing transmission facilities constructed to meet wartime emergencies under temporary FPC authorization. The company also asks permission to construct additional facilities and to remove a portion of two 4-inch lines near Little Rock which will no longer be used. The new construction is estimated to cost $530,391 and is to be financed from cash reserves and through an advance from Arkansas Power & Light Company.

The first of the facilities for which a permanent certificate of convenience and necessity is sought consists of 36 miles of 10¾- and 12¾-inch pipe extending from the Lisbon field in Louisiana to El Dorado, Arkansas, and thence to the Ozark Ordnance Plant.

The facilities which were constructed to supply the Shumaker Naval Ordnance Plant, located in Ouachita county, Arkansas, are comprised of 6 miles of 8¾-inch pipe extending from a point on Arkansas Louisiana's 12-inch line in Ouachita county to the ordnance plant, and a 500-horsepower compressor unit at Barton compressor station near El Dorado.

In the application filed under Docket No. G-697, Arkansas Louisiana asks permission to operate on a permanent basis its "L system" which was originally constructed to supply gas to war plants in Arkansas.

According to the applications, the total investment in these facilities to date is about $3,548,776.

Exemption Policy to Be Severer

A NEW and tougher policy on exemptions from the competitive bidding requirements for preferred stocks, whether or not they involve exchange offers, was announced recently by the Securities and Exchange Commission.

The commission's new approach was set

forth in its findings granting such an exemption to Oklahoma Gas & Electric Company on its issue of 675,000 shares of new 4 per cent cumulative preferred stock for exchange purposes.

The SEC pointed out that it has undergone a change of view since approving without competitive bidding the preferred stock financing and exchange in the recent case of Cincinnati Gas & Electric Company, and said:

"The commission has since that (Cincinnati Gas) decision given considerable study to the general problem of competitive bidding on preferred stock issues. The commission is now of the view that, as a matter of future policy, preferred stock issues under the Holding Company Act should ordinarily be submitted to competitive bidding, whether or not they involve exchange offers.

"However, the present issue was the subject of informal discussions with the staff of the commission prior to the formulation of the above policy. The proposals have been approved by the Oklahoma state commission as to the accounting entries and the issuance of the securities has been submitted and approved by the Arkansas state commission. Under all the circumstances of this case and without considering this matter as any precedent in future cases, we will grant the exemption from the requirements of Rule U-50."

The commission refused to approve at this time Oklahoma's request for an order nullifying an undertaking entered into by the company and approved by the commission October 28, 1943, regarding a restriction on the payment of dividends on capital stock of the company.

Request FPC Authorization

THE Federal Power Commission has received a joint application from the Iroquois Gas Corporation, Buffalo, New York, and the United Natural Gas Company of Oil City, Pennsylvania, for permission to construct approximately 20 miles of 16-inch loop line from "Maloney farm by-pass" of United, located about 2½ miles south of the Pennsylvania-New York state line, to "Little Valley by-pass" of Iroquois, Cattaraugus county, New York. It is estimated the cost of this project will be $465,000 to Iroquois and $65,000 to United, making a total of $530,000.

The proposed loop will complete an integrated pipe-line system composed of four continuous parallel pipe lines through which Iroquois obtains delivery of part of its natural gas requirements from United. According to the application, the plan for constructing this parallel pipe-line section was originally proposed about 1915 at the time other sections of the gas system were constructed. Until recently, gas from producing gas wells located in western New York, together with gas produced in northwestern Pennsylvania and originating with United has enabled Iroquois to meet peak-day demands without completion of this loop. The accelerated rate of gas production during the war and the failure to discover prolific gas fields, together with the decline of gas production in New York state, now necessitate construction of pipe-line facilities to provide lower pipe-line pressures for transmission of a gas supply to safeguard existing customers.

Iroquois, a subsidiary of National Fuel Gas Company, distributes mixed and natural gas to 78 communities in western New York, including Buffalo and Lackawanna. In addition, the company serves gas at wholesale to New York State Electric & Gas Corporation, Republic Light, Heat & Power Company, and two affiliated companies, the Wanakah Gas Corporation and Provincial Gas Company, Ltd., Canada.

FPC Approves Plan

APPROVAL of Canadian River Gas Company's plan to make accounting adjustments involving the elimination of $3,757,022 from its gas plant account was announced on March 4th by the Federal Power Commission. This amount represents write-ups or other excesses over the original cost of the gas plant.

The proposals, as approved, brought to a conclusion matters relating to the original cost of the gas plant which the commission considered in connection with its Opinion No. 73 and accompanying order reducing rates of the company.

The original cost of gas plant claimed by the company was considerably in excess of the original cost as determined by the commission for purposes of the rate proceedings. After the affirmation by the United States Supreme Court of the commission's order in the rate proceedings, the company on October 12, 1945, filed reclassification and original cost studies of gas plant as of January 1, 1940, in which it reclassified $3,757,022 in Account 107, Gas Plant Adjustments, and proposed that the amount be disposed of by charges to other accounts.

The Oklahoma Corporation Commission advised that the plan of disposition was satisfactory and the New Mexico Public Service Commission stated that it was a matter over which it has no jurisdiction.

Rate Schedules Approved

THE Federal Power Commission recently announced its approval of new rate schedules filed by Natural Gas Pipeline Company of America, Chicago, Illinois, which will (1) provide a refund aggregating $2,334,319 to ultimate consumers who purchase gas from 11 companies serving Illinois, Iowa, Kansas, and Nebraska communities which in turn purchase gas from Natural Gas Pipeline and (2) reduce the cost of natural gas to the 11 companies by $687,955 annually in the future.

The refund and reduction result from savings in the cost of gas purchased by Natural Gas Pipeline from Colorado Interstate Gas Company pursuant to the commission's order in Docket No. G-118, which was affirmed by the United States Supreme Court last April.

The rate reductions effected by the order recently announced are a sequel to the $6,500,000 annual reduction in the rates of Natural Gas Pipeline Company of America ordered effective by the commission on September 20, 1942.

Arkansas

Offers to Buy Line

AN offer to buy, complete, and operate as tax-paying facilities the Jones Mill power plant and the Ark-La transmission line, at a cost of more than $13,000,000, was recently made by C. Hamilton Moses, president of the Arkansas Power & Light Company.

Construction of the Jones Mill plant was started by the Federal government when work was begun on the aluminum plant at Lake Catherine, Arkansas, but was suspended during the war when the Southwestern Power Pool of private utilities and government facilities was formed to supply power for the plant. The Ark-La line, 194 miles long, was built at a cost of about $4,000,000 by the Ark-La holding company coöperative, composed of five south Arkansas and five north Louisiana rural co-ops, to furnish part of the power requirements of the Lake Catherine aluminum plant and its use was discontinued when the aluminum plant was closed down after the war.

"The Arkansas Power & Light Company will reimburse the Federal government for money already expended on the Jones Mill power station and will install generating capacity as required, up to 70,000 kilowatts or any more that might be needed," said Mr. Moses.

"We will also take over and operate in our integrated system the Ark-La line, assuming the outstanding indebtedness of about $3,800,000 now owed the Federal government by the coöperative.

"Under this plan the Jones Mill plant can be completed and the Ark-La line utilized with repayment to the government of the funds expended upon them, eliminating the need for further expenditures of tax funds and increasing the capital tax-paying wealth of the area."

The Arkansas Power & Light Company and 10 other utilities of the Southwest recently offered to take the full output of all government flood-control dams in the area, and to construct tax-paying lines to bring the power to markets. Under this plan they have agreed to pass on all savings to all customers, under supervision of regulatory commissions, and to give preference to rural co-ops and government agencies in accordance with provisions of the Flood Control Act of 1944.

Douglas G. Wright, administrator for the Southwestern Power Administration, told the 11 companies by letter on March 8th that "There are a number of reasons why your offer (February 15th) cannot form the basis for negotiations."

"You plainly wish to have the exclusive preference in the purchase of this power and energy and a monopoly on the distribution and use of it in areas served by your companies."

Acceptance of the offer, it was said, would have eliminated the necessity for a proposed $202,000,000 public power system advocated by Mr. Wright.

California

Would Revise Fare Schedule

MANAGER of Utilities James H. Turner early this month announced he was recommending to the public utilities commission of San Francisco that it resubmit to the board of supervisors a slightly revised streetcar fare schedule.

The proposed schedule would include, however, the originally proposed 10-cent cash fare or three rides for 25 cents by use of tokens.

Turner's recommendation followed receipt of a letter from Frank H. Sloss, regional price executive for the Office of Price Administration, stating that an OPA audit of Municipal Railway books had failed to show the necessity of a fare increase. The letter suggested that the railway find some way to reduce its costs and increase its revenues without increasing fares.

To this Turner answered: "We cannot reduce costs. We are confronted with ever-increasing costs today. An increase in fares is necessary. It will be my recommendation to the utilities commission that it resubmit the slightly revised schedule to the board of supervisors."

Turner's request for an audit by the OPA was made in the hope a study of the railway's figures would result in the OPA dropping its Federal court suit which is blocking the city's attempt to increase fares.

District of Columbia

Rate Hearing Scheduled

THE District of Columbia Public Utilities Commission was scheduled to hold its annual public investigation into the rates and services maintained by the Potomac Electric Power Company on March 26th, under its sliding-scale arrangement, E. J. Milligan, executive secretary of the utilities commission, has announced.

Anyone with suggestions for new rates was invited to appear, Mr. Milligan said.

Georgia

Electric Rate Cut Ordered

THE Savannah Electric & Power Company has been ordered by the state public service commission to reduce residential and commercial electric rates by $127,300 annually, effective April 1st.

Giving effect to the rate reduction, the company's net earnings for 1946 are estimated at $505,000, or a 5 per cent rate of return on the book value of the electric plant, less depreciation reserve.

In ordering the reduction in rates, the Georgia commission considered solely the $240,000 yearly saving which its staff estimated Savannah Electric & Power Company would realize from elimination of Federal excess profits taxes at the 1945 year-end.

As against this the company pointed out, unsuccessfully, that electric revenues this year would fall short of 1945 because of closing down of shipyards and Army installations and the general increases in all operating costs now being experienced.

Another important feature of the Georgia commission's order was the elimination of prompt payment discounts for electric service. (See, also, page 458.)

Flat Rate Beats Meter Shortage

OWING to a shortage of meters, electric service will be extended to new residential customers on a flat rate basis until meters can be installed, the Georgia Power Company announced recently.

Under the temporary plan, a customer's bill is based on a flat rate for residential lighting and for small appliances, plus an estimated rate for large appliances in use at the time service is initiated or put in use later, the company stated.

Meters will be installed as soon as the supply, now reduced by strikes, becomes adequate.

According to the company, it is expected actual consumption will be as much or more than the estimated consumption, but the customer and the company agree there will be no adjustment for unmetered service after a meter is installed.

Indiana

Ruling against OPA Upheld

THE Office of Price Administration on March 1st lost its appeal for an injunction against the fare increase of Indianapolis Railways, Inc. The Federal Circuit Court of Appeals at Chicago upheld the decision last December of Judge Robert C. Baltzell, of the Federal court at Indianapolis, in denying the OPA petition.

The OPA intervened in the fare case last fall when the utility, which operates the Indianapolis bus, streetcar, and trolley system, asked the state public service commission to have the increased fares made permanent.

The fares, which went into effect on a trial basis for three months starting September 15th, were 10 cents cash or eight tokens for 55 cents on all vehicles. Formerly, the charges were 7 cents cash or four tokens for 25 cents on streetcars and trackless trolleys, and 10 cents straight on the busses.

Early this year the state commission cut the token fare back to four for 25 cents, under an emergency order, which the transit firm contended made the OPA appeal subject to dismissal from court on the grounds it was then a moot question.

The decision in the Chicago court was unanimous. Participating were Judges Evan A. Evans, Will M. Sparks, and J. Earl Major.

The railway company on March 8th, at a hearing before the state public service commission, proposed a token rate for the remainder of 1946 of three tokens for 25 cents, a 10-cent cash fare, and a 2-cent transfer fee.

And even with the fare in the immediate postwar years, 1947, 1948, and 1949, the company contended in testimony presented that annual deficit after net operating income has

been adjusted will be more than $50,000 yearly, indicating that an even higher fare will be necessary.

Announcement of a 15-cent hourly pay increase for employees of Indianapolis Railways, Inc., on March 4th ended a company-union controversy which for a time had threatened to tie up the entire transit system in the city of Indianapolis.

Meanwhile hearings on the company's appeal for a higher fare schedule were resumed before the state public service commission. When the hearing was recessed January 22nd Indianapolis Railways was presenting evidence to show that it cannot make a "fair return" on present fares.

In addition to the wage increase, the company-union settlement provides for a 5-day, 40-hour week. The union, the Amalgamated Street, Electric Railway, and Motor Coach Employees of America (AFL), had protested the company's scheduled return to a 5-day week without compensating wage adjustment.

A company spokesman said the increase will mean an additional $500,000 to $600,000 a year to be paid out by the company in wages. Operators also receive a passenger bonus which averages 4 to 5 cents an hour.

Kentucky

Anti-TVA Bill Beaten

THE state house of representatives on February 27th defeated the Moss anti-TVA bill by a vote of 60 to 31.

The action, by forty-eight Democrats and twelve Republicans, definitely shelves for the present session a measure, which according to its opponents, would have made it virtually impossible for municipalities to acquire their own electric utility systems or to extend the use of TVA power in the state.

The bill had passed the senate on February 7th by a vote of 24 to 14.

Maryland

Sign Arbitration Contract

WRITTEN agreement between the Baltimore Transit Company and its employees covering the decision of a board of arbitration in the recent labor dispute and providing for the arbitration of any dispute which may arise in the future was announced recently after a meeting between union and company officials.

The agreement was made effective as of December 29, 1945, and will remain in force until January 4, 1947, with the provision that it shall continue from year to year thereafter unless written notice by registered mail is given by either party at least sixty days prior to the expiration date of any year.

Heading the union group was Clayton G. Perry, president of Division 1,300, the Amalgamated Association of Street, Electric Railway, and Motor Coach Employees (AFL), with Fred A. Nolan, president of the company, leading the employers.

The wage increase, according to the company, amounts to approximately one and three-quarter million dollars a year, with retroactive pay amounting to $650,000.

Michigan

Panel Picked in Power Dispute

LIEUTENANT General Vernon J. Brown, acting in the absence of Governor Kelly, early this month appointed a special 3-man panel to mediate a labor dispute between the Michigan Northern Power Company, at Sault Ste. Marie, and members of District No. 50, United Mine Workers.

The panel consists of James Greenfield, state labor mediation board conciliator; the Reverend J. Elmer Dahlgren, pastor of the Elim Lutheran Church, Sault Ste. Marie; and Carolton E. Lindstrom, cashier of the Central Savings Bank, Sault Ste. Marie.

John Badoud, regional director of the union, filed a 5-day notice of intention to strike with the state board February 16th, but the board accepted the filing as a 30-day notice, in conformity with a state law requiring a month's "cooling-off" period in utility disputes. The union notified the board on March 1st that negotiations were "at a standstill."

Appeal Proposed

A RECOMMENDATION that an appeal be taken from a circuit court decision refusing to

dismiss completely the suit of the greater Detroit and Wayne county CIO council against the Detroit street railway was planned recently by Richard A. Sullivan, DSR general manager.

Circuit Judges Clyde I. Webster, Robert M. Toms, and Arthur Webster on February 28th ruled out the council's request for an order restraining the DSR from collecting the new 10-cent fare.

At the same time, the judges, over protest of the DSR, ruled that C. Pat Quinn, president, and Samuel Sage, secretary of the council, could continue their suit by amending their injunction plea to appear as ratepayers rather than as officers of the council.

A wage increase of 13 cents an hour, or approximately 10 per cent, has been given 1,900 DSR maintenance workers in an arbitration award announced recently. Each employee will receive a boost of $5.20 for a 40-hour week. It became effective March 2nd and, in accordance with the agreement to arbitrate, will remain in effect until February 28, 1947.

Minnesota

Rate Reductions Announced

RATE reductions totaling $420,000 a year for St. Paul electric users were announced recently. The cuts, intended particularly for residential and the smaller commercial users, will become effective on bills issued after next April 1st, it was announced by the Northern States Power Company.

The reduction in St. Paul was part of a program announced by the company on March 8th for cutting rates in all Minnesota areas served by the concern. Total reduction granted Minnesota users will be about $2,500,000. Nearly half of that rate saving will be given customers in St. Paul, with its cut of $420,000, in Minneapolis where the saving will be $785,000, and in the adjoining suburban areas.

An emergency ordnance establishing the new rates in St. Paul was introduced in the city council by William Parranto, commissioner of public utilities.

Mississippi

Senate Votes Oil and Gas Bill

A BROAD antiwaste, proconservation oil and gas bill, that creates a 5-member board appointed by the governor to enforce the provisions, passed the state senate recently.

Senator Luther A. Whittington of Natchez, author of the 12-page measure and who steered it to passage, explained that the cost of administering the proposal would be borne by the producing companies in the amount of seven-eighths and the remaining one-eighth by the royalty owners.

The oil and gas board would be empowered to retain a petroleum consultant and appoint an oil-gas supervisor and fix their compensation. The supervisor, subject to board approval, would have the authority to employ all personnel to execute the provisions.

The Whittington oil-gas conservation bill passed by a vote of 32 to 12. Major amendment adopted to the bill was one by Senator C. W. Sullivan of Hattiesburg to regulate the spacing of wells. Senator Whittington denied the measure was a proration bill.

The board would have headquarters at Jackson with authority to establish district offices in any county seat that it regards as feasible.

New Hampshire

Electric Rates Reduced

THE state public service commission on February 28th issued an order requiring the Public Service Company of New Hampshire, the state's largest utility, to reduce its domestic electric rates in the amount of $342,515 a year. This reduction of approximately 9 per cent, upon a revenue basis, was agreed to by the company following conferences with the commission. The revised tariffs were actually filed on February 11th, and they became effective on March 1st.

The commission order recited, as one of the reasons for the reduction, increased customer consumption which, in 1945, for the first time in the history of the company, exceeded an average of 1,000 kilowatt hours per year per customer, the exact average figure being 1,012 kilowatt hours of electricity, with average revenue of $44.93.

Although not specifically stated in the report, it was understood that another element entering into the computation of the new rate was reduced taxes due to repeal of the Federal excess profits tax. A considerable por-

tion of this tax saving was passed on to employees in a general wage increase and the balance was taken into account in determining the amount of the rate of reduction.

New Jersey

Gas Walkout Voted

THIRTEEN hundred gas production workers employed by the Public Service Electric & Gas Company of New Jersey have voted to strike at the end of the prescribed 30-day cooling-off period, Joseph P. Dunn, counsel for the Harrison Gas Works of Public Service, independent union, announced on March 2nd. He said the vote was 1,233 to 37 in favor of striking because of the company's refusal to meet a 20 per cent wage increase demand.

The company has offered a 12½-cent-an-hour rise, which the union has rejected, he said. Plants that will be affected by the walkout if it takes place are in Harrison, Paterson, New Brunswick, Trenton, Camden, and Glassboro. Present minimums range from 94 cents to $1.12 an hour.

Resigns from Commission

COMMISSIONER Joseph E. Conlon recently resigned as a member of the state board of public utility commissioners following his nomination by Governor Walter E. Edge and confirmation by the state senate as judge of the court of common pleas of Essex county.

Judge Conlon was originally appointed to the New Jersey commission by former Governor Charles Edison in June, 1941. During the war period he also served as state coördinator of transportation.

Joseph A. Brophy, who has resigned as secretary of state, has succeeded Judge Conlon upon the board and will serve the balance of Judge Conlon's unexpired term, ending in June, 1947. He is a Democrat and former mayor of the city of Elizabeth, New Jersey.

Backs Utility Strike Ban

THE New Jersey State Chamber of Commerce recently announced its support of Governor Walter E. Edge's administration bill to curb public utility strikes.

In a statement backing the bill, which would provide state intervention in labor disputes threatening interruption of public utility services, the chamber of commerce said "no group should have the power to deprive the general public of essential utility services, since the health and safety of the people are paramount."

The bill recently passed the state senate by a vote of 13 to 3.

New York

Meter Plan Strikes Snag

THE state public service commission on March 10th advised the Consolidated Edison Company to revise its proposed plan for the purchase of meters from submetering companies. An opinion by Milo R. Maltbie, chairman of the commission, reviewed previous arrangements between Consolidated and submetering companies and suggested that the utility, having encouraged submetering practices in the past, is under some obligation to take over equipment which it can use in the "rendition of service."

Because of rate reductions put into effect recently by the company following the merger of several subsidiaries, certain submeterers, according to the commission, now find that their business is no longer profitable and wish to retire from the submetering business, but they object to Consolidated's plan to buy only usable equipment.

Mr. Maltbie declared that Consolidated or its predecessors were responsible for the introduction of submetering and the utility therefore has an obligation, "possibly not legal but moral," which should be recognized when a submeterer decides to discontinue his business. On the other hand, the opinion continued, the company should not be required to take over obsolete meters.

Named to Fact-finding Board

EDWARD P. MULROONEY, former police commissioner, on March 5th was named as the fifth member of the special fact-finding committee recently set up to consider wages, working conditions, and labor relations between city transit workers and the board of transportation of New York city.

Mayor William O'Dwyer announced the appointment while the first meeting of the committee was under way in the offices of Arthur S. Meyer, chairman of the state mediation board.

Other members of the committee are Mrs. Anna M. Rosenberg, chairman of the New York City Veterans' Service Committee; Samuel Rosenman, former state supreme court

justice; and Theodore W. Kheel, former executive director of the National War Labor Board.

Utility Told to Ignore Pickets

THE Long Island Lighting Company recently was directed to provide gas and electric service to a customer of Roslyn in a decision by Supreme Court Justice Cortland A. Johnson at Mineola, Long Island.

The customer had been unable to obtain gas and light for his house, one of a group being constructed in Roslyn, when union employees of the lighting company refused to cross picket lines set up by the Building and Construction Trades Council of Nassau and Suffolk counties.

In the same decision Justice Johnson enjoined the council from "doing any act which will result directly or indirectly in depriving the plaintiff of gas and electric service to which he is entitled." A motion by the council to dismiss the action was denied.

The justice in his decision noted that the construction company had declined to enter into any union agreement, as a result of which the council had placed pickets about the housing development.

Industrial Rate Cut Filed

THE Central New York Power Corporation has filed with the state public service commission schedules representing a net reduction of $676,000 annually in its commercial and industrial electric rates, effective April 15th. Nearly 25,000 commercial and industrial concerns will receive reductions under the new scale, while 3 per cent will pay slightly more, the company said.

The reduction follows a $343,000 cut in residential and farm rates, which went into effect on January 1st.

Oklahoma

Street-lighting Bill Cut

A REDUCTION in power rates which will save Oklahoma City more than $45,000 a year was announced recently by Reford Bond, chairman of the Oklahoma Corporation Commission.

Under the new rates street-lighting costs will be cut in half, sewage and water pumping rates will be cut 6.94 per cent, and an average reduction of 6.69 per cent will be made on all other city lighting costs.

The rates will become effective July 1st. George A. Davis, president of OG&E, said the reductions were necessary due to "abnormal conditions" confronting councilmen in meeting city operating costs.

Reductions in Oklahoma City are a part of larger reduction programs to reduce rates for municipal governments, public schools, and county and state buildings in areas operating under an OG&E franchise. The total reduction is expected to effect savings of $200,000 to the affected communities.

Virginia

REA Co-ops Receive Loans

VIRGINIA rural electrification coöperatives have sufficient money in sight to extend electric service to more than 10,000 new rural consumers. An REA spokesman recently stated that Virginia borrowers had received REA loans of $4,120,000 from funds available for the 1946 fiscal year. This amount, together with funds allotted but not advanced during the war years, will make it possible to increase by a third the approximately 30,000 rural consumers now served.

In addition, Virginia borrowers have requested further line construction loans of $2,000,000—an amount sufficient for lines to serve approximately 6,000 consumers. However, only a small amount of this requested total can be approved from 1946 REA loan funds. Of the $200,000,000 made available by Congress to REA during the 1946 fiscal year, only $4,520,000 can go to Virginia.

The REA said plans are now complete for adding several thousand more consumers and work will get under way as line construction materials become available.

Since creation of REA in 1935, Virginia has been allotted $15,023,380 in loans, it was recently reported.

Company and Union Renew Talks

NEGOTIATIONS aimed at preventing a strike April 1st which threatened to shut off light and power for the city of Alexandria, Arlington and Fairfax counties, and other Virginia communities were resumed recently at Richmond. Officials of the Virginia Electric & Power Company expressed hope a satisfactory solution could be reached, but eight locals of the International Brotherhood of Electrical Workers have filed formal notice of their intention to strike unless an agreement is reached before the deadline.

The Latest Utility Rulings

Authority Renounced over Power Company Acquired by Nonprofit Corporation

An application, pursuant to § 204 of the Federal Power Act, for authority to issue securities was dismissed by the Federal Power Commission for lack of jurisdiction because the applicant, Nebraska Power Company, has been acquired by Omaha Electric Committee, Inc., a quasi public nonprofit membership corporation, which is an instrumentality of Loup River Public Power District. The commission held that the power company has become indirectly wholly owned by the power district, a political subdivision of the state of Nebraska through its instrumentality, Omaha Electric Committee, Inc.

The Peoples Power Commission had been created under legislative authority but an injunction was granted against negotiations for its acquisition of Nebraska Power Company properties. On appeal, the supreme court of Nebraska ordered the injunction dissolved. In the interim certain parties, styling themselves "Power Committee," proceeded as individuals to acquire the electric system for the benefit of the citizens of Omaha, to be operated on a nonprofit basis pending a decision of the courts concerning the validity of the creation of Peoples Power Commission, or establishment otherwise of a legal governmental entity to take title.

Members of the Power Committee incorporated Central West Irrigation Company, a nonprofit corporation. Subsequently the name of this corporation was changed to Omaha Electric Committee, Inc.

This corporation acquired the common stock of the power company with financial backing by Loup District. Officers and directors of the power company resigned and new officers and directors were appointed.

The commission concluded that Loup District has real indirect ownership of the Nebraska Power Company by reason of the fact that all of the common capital stock is pledged as additional security for Loup District's indebtedness incurred so as to provide the Electric Committee with the funds to purchase the common capital stock.

Under § 201(f) of the Federal Power Act, which exempts any corporation wholly owned, directly or indirectly, by a state or any political subdivision of a state, or any agency, authority, or instrumentality of the same, the commission held that it lacked jurisdiction. It was said:

> We think this obviously discloses a congressional intent to subject private enterprise alone to regulation by the Federal Power Commission, and not to extend that regulation to government and its instrumentalities. The word "indirectly" extends the exemption to cover corporations wholly owned by any "agency," "authority," or "instrumentality" of the United States, any state, or any political subdivision of a state. The word "indirectly" as it appears in § 201(f) unquestionably was intended to mean something more remote and indefinite than "direct" ownership. It concludes other modes of owning than by taking legal title. Taken together the words "directly or indirectly" cover every character of proprietary interest.

Concerning a contention that the corporation was not wholly owned because there was preferred capital stock owned by the public, the commission pointed out that the holders of a majority of the stock must be present in person or by proxy at each meeting of the stockholders. The commission continued:

Since there are 1,000,000 shares of common stock issued and outstanding, all owned by the Electric Committee, and only 74,523 shares of preferred stock outstanding, owned by many interests, it appears impossible for the preferred stockholders at any time to control the management and operation of the applicant corporation. But what is more important is that the legislative history of the act indicates that the Congress did not intend the words "wholly owned" to include ownership of preferred stock.

The commission further held that authorization was not required for transactions between the power company and the Power Committee or Loup River Public Power District.

A transaction in which a public utility disposes of facilities to a political subdivision of a state or its instrumentality, it was held, would be a transaction in which such political subdivision or instrumentality would be involved, and therefore not subject to commission control. Reference was made to a similar view of the Securities and Exchange Commission in *Re* Western Pub. Service Co. (1941) 43 PUR(NS) 395.

Chairman Olds and Commissioner Smith, dissenting, not only stated their opinion that the commission still had jurisdiction of the company, but also disapproved the proposed security issues. They criticized the financial results and noted that the company's capital structure after redemption of preferred stock would consist of more than 90 per cent of debt securities. *Re Nebraska Power Co. (Opinion No. 128, Docket No. IT-5954).*

SEC Exclusion of Officers' Stock from Participation Held Erroneous

An order of the Securities and Exchange Commission, refusing recognition of participation rights by corporate officers who had acquired stock while a reorganization was pending, has been reversed by the United States Court of Appeals for the District of Columbia on the ground that the commission had not rightly construed and followed the opinion of the Supreme Court in Securities and Exchange Commission *v.* Chenery Corp. (1943) 47 PUR(NS) 15. A former order denying participation had been reversed by the circuit court in (1942) 44 PUR(NS) 138, and the reversal had been sustained by the Supreme Court, but the matter had been remitted to the commission for reconsideration.

The Supreme Court had held that officers and directors are not precluded from buying and selling corporation stock. Established judicial principles do not require that such stock should not participate on a parity with other stock if it is not found that specific transactions under scrutiny showed misuse by the officers of their position as reorganization managers. The action of the commission, based on an erroneous application of equitable principles, the court decided, could not be upheld merely because findings might have been made which would justify its order.

The Supreme Court said that if the commission, acting upon its experience and peculiar competence, had promulgated a general rule of which its order was a particular application, the problem for consideration of the court would be different. The commission, however, upon reconsideration, declined to adopt such a rule on the ground that no rule or standard which would be fair and equitable in all cases could be made.

The commission pointed to no facts challenging good faith, suggested no betrayal of a fiduciary duty, and hinted at no use of inside or confidential information. A holding of illegality, therefore, was held not responsive to the opinion of the Supreme Court. No additional findings had been made and no additional considerations disclosed.

The commission attitude, said the reviewing court, seemed to be that § 11(e)

of the act conferred a purely discretionary power not subject to judicial review. The court could find nothing in the act to sustain this view. It said in part:

> It is true, as the commission now asserts, that the Supreme Court recognizes that the act and its provisions confer upon it broad powers for the protection of the public and that this authority was intended to be responsive to the demands of the particular situations with which the commission might be faced. But it is also true that the court recognized that the commission, like the ocean, has its appointed bounds, and lest it break through its limits and engulf a continent—spoke these words of caution: "The commission's action cannot be upheld merely because findings might have been made and considerations disclosed which would justify its order as an appropriate safeguard for the interests protected by the act." And the court added this further caution that the grounds upon which the administrative agency acts must be clearly disclosed and adequately sustained.

The commission's position, it was said, went beyond the mere question of the necessity of a rule. It insisted upon an absolute right to approve in one case and to refuse to approve in another. The court refused to recognize an unfettered discretion, irrespective of adequate findings based upon a fair appraisal of the evidence. *Chenery Corp. et al. v. Securities and Exchange Commission.*

Restriction on Plant Expansion Barred From Village Supply Contract

A CONTRACT between a village and an electric company for a supply of current to a municipal plant was upheld by a New York court in a taxpayer's action. A clause in the contract limiting the right of the village to expand its plant was, however, held to be not only illegal but a peril to public rights and interests. A temporary injunction was granted to the extent of restraining public officials from entering into a contract with such a limitation.

The court was fully in accord with an argument that a court must not sit in judgment upon questions of legislative policy or administrative discretion. The court was in agreement with a contention that an electric company with whom such a contract is made should not and cannot be compelled to sell energy to the village to be used in competition against it. These, however, in the view of the court, were not the questions raised. It was said in part:

> Article 14-A of the General Municipal Law and Art. 10 of the Village Law grant to municipal corporations the right to establish, own, operate, and extend public utility services. Under the clause in question, neither these defendants nor their successors could do what the law specifically authorizes them to do.
>
> Contracts may not be made limiting the exercise of such rights. The power to establish and operate public utility services is for the public benefit and is legislative in character. Its exercise cannot be limited or curtailed by contract.

Ambiguity or indefiniteness in the contract was not considered sufficient to characterize it an illegal official act or waste of public property. Such a contract was held not to be a contract relating to public works and subject to the laws regulating them. *Bartholomew v. Village of Endicott et al. 59 NYS2d 84, 89.*

Electric Rates for Ice Making and Refrigeration Corrected in Spite of Inflation Plea

REVISED rates for electricity supplied for ice making and refrigeration were approved by the New York commission where existing rates were found to violate legal requirements, although representatives of the Office of Price Administration objected. Any rate which does not vary to some degree by the

amount of energy consumed, said Chairman Maltbie, is improper, and arbitrary classifications that characterize the present rates condemned it.

An OPA representative had stated that any price increase tends to be inflationary, even though it may be counteracted by another price decrease, and that the effort to prevent inflation must continue although the war has ceased.

Commission Chairman Maltbie continued:

> There can be no question but that inflation is a grave evil to be prevented if possible; but when the Federal authorities and to a lesser degree other authorities are expressly authorizing or permitting increase in wages in repeated instances, it is difficult for us to understand why this commission should be expected to reverse its decision made long ago (in 1941) that the rate schedule here being considered was unsound, improper, and in violation of the statutory requirements regarding just and reasonable rates. The task of preventing inflation does not supersede all other considerations and there is no obligation resting upon this commission to prevent any changes in rates upwards when in many cases the decisions of other authorities make revisions upwards necessary unless the commission is to disregard the laws under which it is operating.
>
> Further, the record of this commission in lowering rates is an enviable one and the slight increase which may be brought about as a result of its determination in this proceeding is far more than offset by the reductions amounting to millions of dollars in the very area affected by the pending proceeding.

The margin between summer and winter peaks on the generating equipment seemed to be needed for overhauling equipment. The distribution system had no appreciably greater capacity in summer, in relation to load imposed upon it, than it had in winter, because of the reduction in load-carrying capacity in summer due to higher temperatures. Customers apparently could not avoid the peak load in summer because it might come at any time during the day. The testimony strongly indicated, in the opinion of Chairman Maltbie, that any preferential treatment given to ice-making and refrigeration customers on the basis of their seasonal load was of doubtful justification.

Various objections were made to a power-factor clause. A discount for high-power factor, it was observed, would give reductions to certain customers but apparently no corresponding reduction in cost to the companies of serving them. It would also complicate metering and make the schedules more complex.

Rates, it was said, should be developed for the character of use of customers and not for the purpose for which the energy is used. *Re Consolidated Edison Co. of New York, Inc. et al. (Case 11025).*

Prompt Payment Discount Eliminated When Electric Rates Reduced

THE Georgia commission, after considering the effect of reduced Federal income taxes, ordered a reduction in electric rate schedules of the Savannah Electric & Power Company. Elimination of a prompt payment discount on bills for service was ordered. The commission declared:

> It is the opinion of the commission that prompt payment discounts should be omitted whenever revision of rates is under consideration. While there may be argument for discount for prompt payment, there are many instances where the charge which is added and collected on delayed payments works a real hardship, and the amount of the charge is oftentimes out of proportion to the added cost to the company on delayed payment of bills. Investigation into the experience of other companies by the commission appears to indicate that collections are more prompt after the elimination of the discount, for the reason that with a 10-day period of grace consumers delay payment until the end of the period, while the elimination of the discount results in payment of a majority of bills immediately upon receipt.
>
> It is further a matter of common knowledge that bills for competitive commercial services of nonutility character are not discounted for prompt payment, and dis-

counts are not applied to rates prescribed by this commission for telephone service.

Notice was taken of the fact that the Revenue Act of 1945 eliminates excess profits tax and reduces normal and surtax rates from 40 per cent to 38 per cent. The new rate schedules, according to the commission, would produce a return of about 5 per cent on book value of the electric department, less depreciation reserve. *Re Savannah Electric & Power Co. (File No. 19384-1, Docket No. 7913-A).*

Rate Increase Contingent on Improved Service

An application for authority to increase natural gas rates was granted by the Indiana commission in so far as it applied to territory being adequately served, but denied as to territory not being blessed with such service. The commission said that in establishing rates the service the utility is able to render, and is actually rendering, must be considered, since rates and service are inseparable and may be said to "walk hand in hand."

The commission considered two basic problems: (a) The establishment of the current fair cash value of property, and (b) the establishment of rates that would yield a reasonable return. Estimated original cost, as determined by the commission's engineering department, was accepted as a measure of the current fair cash value of the utility property used and useful in the public service, since it had been adopted by the company for the purpose of the proceeding.

The rate of return, being slightly less than 2 per cent, was admittedly low, but the service history of the utility showed that it was not rendering satisfactory service and had failed to maintain facilities adequate to render such service. Labor shortages and inability to acquire materials and equipment because of World War II were advanced as causes of the service deficiency or failure.

In answer to this the Indiana commission replied:

> No one can seriously question the difficulty that has been experienced in obtaining both labor and materials during the past war; however, petitioner was in no better condition prior to World War II, during those years when both labor and materials were plentiful. There can be no question but what petitioner has known for many years, or by the use of ordinary diligence should have known, that it had an inadequate supply of natural gas available from Indiana fields, and should have made timely arrangements and provisions to meet the reasonable needs of the public it serves. This might have been done by the construction of artificial gas plants, the purchase of natural gas from interstate sources, the installation of additional and adequate storage facilities, the enlargement and modernization of the transmission facilities, and by other improvements and more competent management. These are matters of management and not regulation and this commission cannot and does not propose to encroach upon the realm of management.

To require customers to pay a high or even a moderate rate for service they were not receiving was deemed to be unreasonable, unjust, and unlawful. The public interest, the commission said, is not necessarily best served by the lowest rate, but rather by the lowest rate which will tend to assure adequate service to meet the public needs, both present and future, provided the utility has facilities to render it.

The commission opined that since the public utility enjoys a monopoly and is charged with the responsibility of furnishing reasonably adequate service to the public in the territory where it is authorized to operate, it should provide means of supplying the reasonable needs as they arise before being entitled to any return upon the value of its property. The public cannot be expected, and the statute does not contemplate that the public should be required, to pay rates which return to the utility a profit to be accumulated until such time as it can in the future acquire adequate facilities sufficient to enable it to perform its statutory duty. *Re Eastern Indiana Gas Co. (No. 15381).*

Other Important Rulings

AMBIGUOUS and conflicting tariff provisions resulting in billing and collection errors should, according to the California commission, be simplified and clarified without effecting any rate increase; and unsupported statements that rates are not compensatory will not serve to justify rate increases. *Re Pacific Freight Lines et al. (Decision No. 38230, Application No. 26648).*

The California commission declared that to permit the indiscriminate quotation of rates on a basis different from the form in which they are stated would result in serious enforcement difficulties and inconvenience and dissatisfaction on the part of shippers and consignees, although departures from the rate-quoting and rate-collecting requirements concerning like units of measurement may be necessary and justified in individual cases, in which event carriers may apply for appropriate relief. *Re Maximum-Minimum Rates (Decision No. 38195, Case Nos. 4121, 4246, 4293, 4434).*

In a rate dispute between shipper and carrier over the date of application of a new tariff schedule, which refers to an old tariff for rules, rates, and application, the Michigan commission held that all restrictions of the old tariff are incorporated by reference in the new one and that, since a restriction exists as to the date of application, such restriction is a controlling factor in determining the date of application of the new tariff. Tariffs cannot be given a retroactive effect and cannot be made to apply to conditions other than those existing upon the date when such tariffs become effective. *General Motors Corp. v. Associated Truck Lines, Inc. (D-3434).*

A transfer of a certificate of convenience and necessity as a common carrier to a motor transport company already holding a contract carrier permit was approved by the Pennsylvania commission where a clear showing was made that the divergent nature of the two types of service would preclude interchange of equipment or combination of facilities in any way which could give opportunity for evasion of tariff provisions, discrimination in rates, or other frauds on the public. *Re Kirk (Application Docket No. 39535, Folder 3).*

The reasonableness of fares charged for sight-seeing motor carrier service, in the opinion of the Colorado commission, cannot be measured by the same standards as a year-around operation, since the sight-seeing service comes within the field of luxuries and is a seasonal business enjoyed by those who can afford it. *Re Rates, Fares, Charges, Tariffs, Rules, Regulations, and Practices of Sightseeing and Auto Livery Service (Decision No. 25251, Case No. 4933).*

A Texas appellate court upheld a decision that a gas company not having an exclusive franchise had no legal right to complain of the action of a city in purchasing, or constructing, or maintaining a gas system and issuing revenue bonds in payment, where the company sued on the ground that the bond issue constituted a cloud on easements, titles, and franchise contracts of the company. *Rio Grande Valley Gas Co. v. City of McAllen et al. 152 F2d 591.*

Because the expenses of operating a water utility normally are made up of certain cost elements which exist whether any water is used or not, the Wisconsin Public Service Commission in a proceeding to determine rates for temporary or seasonal service ruled that seasonal or temporary connections should be required to carry such costs even where water is actually used only for a short period during the year. *Re City of Cudahy (2-U-2108).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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UNITED STATES SUPREME COURT

United States et al.

v.

New York Telephone Company

No. 55
— US —, 90 L ed —, 66 S Ct 393
January 28, 1946

APPEAL *from decree of District Court for the Southern District of New York enjoining execution of accounting order of Federal Communications Commission; reversed. For lower court decision, see (1944) 55 PUR(NS) 321, 56 F Supp 932, and for Commission decision, see (1943) 52 PUR(NS) 101.*

Accounting, § 32 — Property acquired from affiliate — Compliance with rules in force at time.

1. A decision on the validity of an order of the Federal Communications Commission requiring a telephone company to charge to surplus the difference between the price for property acquisition paid to an affiliate and net book cost to the affiliate need not rest on the question whether the accounting entries, when made, were legal under the system promulgated by the Interstate Commerce Commission and in force at the time, where the principal foundation of the order was that the company was legally subject to the requirement of restating its accounts on the basis of original cost, p. 71.

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Accounting, § 56 — Elimination of excess over cost — Retirements — Depreciation reserve.

3. A court, reviewing an order of the Federal Communications Commission requiring a telephone company to charge to surplus the excess of purchase price over net book cost to an affiliated seller, cannot say that the Commission conclusion that the depreciation reserve is inadequate to provide for retirement is erroneous, where the company has retired portions of the property and written out of plant account the amount at which the property was recorded originally and made corresponding charges to depreciation reserve, established under the group method of depreciation, p. 73.

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4. An order of the Federal Communications Commission requiring a telephone company to charge to surplus the difference between net book cost to

an affiliated seller and a higher acquisition price based on structural value is not improper because it affects property already retired, p. 73.

Accounting, § 32 — Property acquired from affiliate — Regulatory rule — Administrative construction.

5. The administrative construction of the accounting rules of the Federal Communications Commission appearing in a stipulation, filed by counsel in litigation resulting in judicial upholding of the rules, to the effect that amounts included in Account 100.4, Telephone Plant Acquisition Adjustments, that are deemed after a fair consideration of all the circumstances to represent an investment which the accounting company has made in assets of continuing value will be retained in that account, does not preclude the Commission from ordering an excess over original cost to be charged to surplus where the Commission has made a proper determination that the excess is no true investment but only a fictitious or paper increment because of affiliation between the seller and purchaser of property involved, p. 73.

Evidence, § 11.1 — Burden of proof — Accounting entries.

6. The Federal Communications Act imposes upon a telephone company and not the Federal Communications Commission the burden to justify accounting entries, p. 73.

Appeal and review, § 28.2 — Accounting order of Federal Commission — Conclusiveness.

7. A court, in order to upset an accounting order of the Federal Communications Commission, must find that it is so entirely at odds with fundamental principles of correct accounting as to be the expression of a whim rather than an exercise of judgment, p. 73.

(STONE, CJ., dissents.)

APPEARANCES: Harry M. Plotkin, of Washington, D. C., argued the cause for appellants; Henry J. Friendly, of New York city, argued the cause for appellee.

Mr. Justice RUTLEDGE delivered the opinion of the court: This case presents new questions of "original cost" accounting, which arise from an order of the Federal Communications Commission requiring readjustments in appellee's accounts. A detailed statement of the facts is necessary to an understanding of the issues. But the short effect of the controversy is that the Commission has required the appellee, New York Telephone Company, to make charges of some $4,166,000 to surplus, with corresponding credits to other accounts; the ultimate effect being substantially to compel the elimination of so-called write-ups from the company's accounts in order to bring them, to this extent, into conformity with the Commission's Uniform System of Accounts, which is based upon "original cost." The attacked entries were made in 1925, 1926, 1927, and 1928, prior to enactment of the Federal Communications Act, upon acquisition by appellee of business and property from its affiliate, American Telephone and Telegraph Company. The case embodies a rather long delayed chapter of the broad controversy presented in American Teleph. & Teleg. Co. v. United States (1936) 299 US 232, 81 L ed

142, 16 PUR(NS) 225, 57 S Ct 170, to be discussed later.

For preliminary purposes it is enough to say that the appellee questions the Commission's power to make the order in issue and a district court, composed of three judges, has permanently enjoined its execution. (1944) 55 PUR(NS) 321, 56 F Supp 932. From that judgment this appeal has followed.

We turn to the facts before undertaking to state the issues more precisely. Appellee, the New York Telephone Company, is a subsidiary of the American Telephone and Telegraph Company, which owns all its common stock. Since its incorporation in 1896 appellee has engaged in the business of furnishing intrastate and interstate telephone service to the public in the states of New York and Connecticut. Prior to 1925, for historical reasons, American also had furnished intrastate toll service between certain points in New York state; but in that year, as part of its plan to withdraw from all such business, American transferred its intrastate toll business in New York state to the appellee.

In connection with this transaction occurred the four transfers of property, the accounting for which now concerns us. In November, 1925, September, 1926, and December, 1928, appellee purchased from American certain toll plant consisting of property such as poles, crossarms, guys and anchors, aerial wire and cable, underground cable, loading coils, conduit, and right of way. This property was needed to handle the additional intrastate business which had been transferred to it. Much of the property so acquired was in the form of an additional interest in toll plant which, prior to these transfers, had been jointly owned by American and New York.

The fourth sale took place in 1927. Before that time American had retained ownership of three essential parts, collectively called "the instruments"—the transmitter, receiver and induction coil—of the telephone stations used by subscribers. American had furnished and maintained these instruments under a contract between it and New York under which New York paid it a specified percentage of its gross revenues. In December, 1927, American sold to New York the instruments then in the service or supplies of New York.

None of these transfers of property changed the physical character of the plant or the service rendered to the public. The sole effects were to shift certain operating costs of American and certain fixed charges and taxes connected with the ownership of the property to New York and to eliminate New York's obligation to make payments to American for use of "the instruments"; for the rest, as the New York Public Service Commission described the transfer, it was "a bookkeeping transaction, with no change in ultimate ownership, in location, or in use of the . . . property, but reflecting only a revised business relationship between affiliated corporations."[1]

American and New York agreed that the purchase price of the toll plant was to be an amount equal to its "structural value." As defined

[1] Opinion of the New York Public Service Commission, Case 9436, adopted December 14, 1943, 1 NYPSCR (1943) 569, 571.

by the Uniform System of Accounts for Telephone Companies (Instruction 13) of the Interstate Commerce Commission, this was "the estimated cost of replacement or reproduction less deterioration to the then existing conditions through wear and tear, obsolescence, and inadequacy." A field inspection and an appraisal of the property were made by engineers, and appellee paid to American a total of $5,973,441.47 for the toll plant. The purchase price of the instruments transferred in 1927 was $6,661,238.91. This was based on the average price charged American by the Western Electric Company, the manufacturer and also a subsidiary of American, during the first nine months of 1927, less a 20 per cent allowance to reflect the then existing condition of the instruments.

The tables set out in the margin show the accounting treatment of these transfers at the time they occurred.[3] As the tables disclose, the "profit" to American, that is, the difference between the net book cost to it and the record book cost to New York, was $4,166,510.57. This amount American credited to surplus accounts as profit on the transactions.

This "profit," of course, arises from the fact that New York in making its accounting entries ignored the original cost to American and the depreciation which had accrued on the books of American up to the time of transfer, and entered solely the actual price paid by it for the properties. It did not, so to speak, "fold in" the net book cost to American.

Having set down these properties on its books at the price it paid to the parent corporation for them, New York then applied what it calls the "group method" of depreciation.[3] Under this method special depreciation rates were not applied to the property in question, despite the fact that it had a relatively short remaining life. Instead the current depreciation rates applicable to similar classes of plant were applied as long as the property remained in service. As portions of the property were retired, they were written out of the plant account at the amounts at which they had been recorded therein, that is, at the structural value; and debits of corresponding amounts, less allowance for salvage, were charged concurrently to the depreciation or amortization reserve.

On January 1, 1937, the Uniform System of Accounts of the Federal Communications Commission[4] for Class A and Class B telephone com-

[2]

Property Group	Book cost to American	Related depreciation and amortization reserves	Net book cost of American	Recorded book cost to New York	Excess or "profit" to American
1925—Toll line property	$5,010,340.19	$801,858.95	$4,208,481.24	$5,831,884.78	$1,623,403.54
1926—Toll line property	95,924.66	14,449.20	81,475.46	97,310.39	15,834.93
1928—Toll line property	28,077.64	4,144.78	23,932.86	44,246.30	20,313.44
1927—Telephone instruments	8,135,224.98	3,980,944.73	4,154,280.25	6,661,238.91	2,506,958.66
Total	$13,269,567.47	$4,801,397.66	$8,468,169.81	$12,634,680.38	$4,166,510.57

[3] The Federal Communications Commission defines "'Group plan,' as applied to depreciation accounting" as "the plan under which the depreciation charges are accrued upon the basis of original cost . . . of all property included in each depreciable plant account, using average service life thereof properly weighted, and upon the retirement of any depreciable property its full service value is charged to the depreciation reserve whether or not the particular item has attained the average service life." 47 Code Fed Reg 31.01-3 (p).

[4] The Communications Act of [June 19]

panies became effective[5] and applicable to New York. Under this system telephone companies were obliged to establish or reclassify their investment accounts on the basis of "original cost."[6]

In reclassifying its accounts as of January 1, 1937, New York estimated the amounts attributable to the surviving toll plant received from American, which it originally had included in its books on the basis of structural value. New York then determined the difference between those estimates and what it estimated was the original cost of such surviving plant to American. The difference was placed in Account 100.4, Telephone Plant Acquisition Adjustment. Account 100.4 includes amounts "representing the difference between (1) the amount of money actually paid (or the current money value of any consideration other than money exchanged) for telephone plant acquired, plus preliminary expenses incurred in connection with the acquisition; and (2) the original cost of such plant, governmental franchises and similar rights acquired, less the amounts of reserve requirements for depreciation and amortization of the properties acquired."[7]

In 1938 New York began amortiz-

1934 (48 Stat 1064, Chap 652, 47 USCA § 220(a), 10 FCA title 47, § 220(a)) provides:

"Section 220(a). The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys."

"Section 220(c). The Commission shall at all times have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing; and kept or required to be kept by such carriers, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply thereto. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry and the Commission may suspend a charge or credit pending submission of proof by such person. . . ."

"Section 220(g). After the Commission has prescribed the forms and manner of keeping of accounts, records, and memoranda to be kept by any person as herein provided, it shall be unlawful for such person to keep any other accounts, records, or memoranda than those so prescribed or such as may be approved by the Commission or to keep the accounts in any other manner than that prescribed or approved by the Commission. Notice of alterations by the Commission in the required manner or form of keeping accounts shall be given to such persons by the Commission at least six months before the same are to take effect."

Prior to passage of the Communications Act the power to prescribe accounts for telephone companies had been lodged with the Interstate Commerce Commission. Interstate Commerce Act § 20(5) [February 28, 1920] 41 Stat 487, 493, Chap 91, subsequently amended [September 18, 1940] 54 Stat 898, 917, Chap 722, 49 USCA § 20(5), 10A FCA title 49, § 20(5). See American Teleph. & Teleg. Co. v. United States (1936) 299 US 232, 235, 236, 81 L ed 142, 147, 16 PUR(NS) 225, 57 S Ct 170.

[5] The order of the Federal Communications Commission prescribing a uniform system of accounts for telephone companies having average annual operating revenues exceeding $50,000, was adopted on June 19, 1935, 1 FCC 45, and was originally to be effective January 1, 1936. This order was stayed because of the proceeding in the American Teleph. & Teleg. Co. Case, *supra* note 4, and did not become effective, as amended, until January 1, 1937. 3 FCC 9.

[6] The Rules and Regulations of the Federal Communications Commission provide that "'Original cost' or 'Cost,' as applied to telephone plant, franchise, patent rights and right of way, means the actual money cost of (or the current money value of any consideration other than money exchanged for) property at the time when it was first dedicated to the public use, whether by the accounting company or by predecessors." 47 Code Fed Reg 31.01-3(x).

[7] At the same time appellee transferred from its Account 171, Depreciation Reserve, to its Account 172, Amortization Reserve, an amount which, when supplemented by future accruals over the estimated remaining life of the plant at the then current depreciation rates, would provide a reserve equivalent to the amount in question in Account 100.4 at

ing this sum by charges and credits to its operating expense Account 614, Amortization of Telephone Plant Acquisition Adjustment, with concurrent entries to Account 172, Amortization Reserve. As portions of the acquired plant were retired, amounts in Account 100.4 were written out of that account and concurrent entries were made in Account 172.

On June 16, 1942, the Federal Communications Commission instituted the present proceeding by ordering a general investigation into the accounting performed by appellee at the time of and subsequent to the four transfers of property involved in this suit. The order required New York to show cause why $4,166,510.57 (the difference between book cost to American, less related depreciation, and the structural value of the property as recorded on the books of New York) should not be charged to its Account 413, Miscellaneous Debits to Surplus, with concurrent entries to such accounts as might be appropriate. The order also suspended all charges to operating expense accounts made by New York on or after January 1, 1943, for the purpose of or in conjunction with amortizing or otherwise disposing of amounts included in Account 100.4, pending submission of proof by respondent of the propriety and reasonableness of such charges.[8]

A joint hearing was then held with the New York Public Service Commission, and in June, 1943, the Federal Communications Commission issued its proposed report. After oral argument before the Commission sitting en banc, a final report and order were issued on December 14, 1943, 52 PUR(NS) 101. The order directed New York to charge $4,166,510.57 to its Account 413, Miscellaneous Debits Surplus, and to make appropriate concurrent entries to other accounts.[9]

New York then brought this suit before a district court of three judges to enjoin the Commission's order.[10] Appellant's motion for summary judgment was denied and on January 2, 1945, as has been said, the district court entered its judgment permanently enjoining the order. (1944) 55 PUR(NS) 321, 56 F Supp 932. The court held that the accounting entries were legal when made, since they were in accordance with the accounting system then prescribed by the Interstate Commerce Commission; and that, consequently, the Commission could "not apply retroactively a new system to write down the plaintiff's surplus." The court also held that the Commission's order was contrary to this court's decision in American Teleph. & Teleg. Co. v. United States (1936) 299 US 232, 81 L ed 142, 16 PUR(NS) 225, 57 S Ct 170,

the termination of the life of the property involved.

[8] The Commission's order was grounded upon the provisions of § 220(c) of the Communications Act. See note 4.

[9] On the same date the New York Public Service Commission also adopted its final report and reached the same conclusion. See note 1. We are informed by a brief amicus curiae filed by the New York Public Service Commission that "a proceeding for the review of the order of the New York Commission has been brought in the appellate division of the supreme court of the state of New York but the argument thereof has been deferred pending the decision by this court in the present case."

[10] Section 402(a) of the Communications Act makes applicable to orders of the Federal Communications Commission, with certain exceptions, the Urgent Deficiencies Act. [October 28, 1913] 38 Stat 219, 220, Chap 32.

and to a "stipulation" filed in that cause by the Solicitor General. The present appeal followed.

[1] Appellee's first argument in support of the district court's decision is a simple one. It is, shortly, that the Commission's order was premised upon the conclusion that the original accounting entries were illegal when made. Appellee disputes this, maintaining that the accounting entries made prior to January 1, 1937, were in full accordance with the system of accounts prescribed by the Interstate Commerce Commission. That system, by the argument, was based not upon original cost, but upon actual cost "without distinction between acquisitions from affiliated companies and acquisitions from other than affiliates."[11]

The answer to this contention is equally simple. It is not necessary to decide whether the accounting entries, when made, were legal under the system promulgated by the Interstate Commerce Commission; for we think the order in review was not based exclusively upon that premise. It is true that language in the Commission's report, when read out of context, might be taken to lend support to appellee's position. But the report, read as a whole, shows that the Commission's order for the readjustment of the accounts went on the view that the inflation was not justifiable in the light of its own original cost system of accounts. The Commission may have thought, as an alternative ground for its decision, that the accounts were illegal when made;[12] but the principal foundation of the order was that appellee was legally subject to the requirement of restating its accounts on the basis of original cost;[13] and consequently any excess on its books over American's net book cost must be eliminated.

[2] We turn therefore to New York's further argument, which begins with a concession. The brief admits that the Commission "could require *the balances remaining* in appellee's property accounts to be reclassified." (Emphasis added.) But it is urged that the Commission properly can go no further. Since portions of the property have been retired and written out of the plant account at the amount at which they were recorded originally and since corresponding charges have been made concurrently to the depreciation reserve,[14] appellee says the Commission is without power, perhaps under the terms of the Communications Act, but at any rate under its own system

[11] The district court apparently accepted this argument, for it said: "The order under review proceeds upon the theory that plaintiff's accounting in question was improper when made and should be corrected." *Supra*, 55 PUR(NS) at p. 329, 56 F Supp at p. 938.

[12] Cf. Opinion of the Public Service Commission of New York holding, in part, that the Interstate Commerce Commission accounting requirements did not oblige New York "to write up the book value of system property or to inflate surplus by intrasystem profits. But the adroit companies found it a convenient excuse for inflating book values." 1 NY PSCR (1943) 569, 587.

[13] See American Teleph. & Teleg. Co. v. United States (1936) 299 US 232, 242, 81 L ed 142, 150, 16 PUR(NS) 225, 231, 57 S Ct 170: "We are not impressed by the argument that the classification is to be viewed as arbitrary because the fate of any item, its ultimate disposition, remains in some degree uncerain until the Commission has given particular directions with reference thereto. By being included in the adjustment account, it is classified as provisionally a true investment, subject to be taken out of that account and given a different character if investigation by the Commission shows it to be deserving of that treatment."

[14] See text at note 3.

of accounts, to order a reclassification of the entries for plant which has now been retired.

The government answers that the effect of the write-up caused originally by New York's recording the property at structural value rather than at American's net book cost has never been eradicated. It points to the fact that New York did not apply a special depreciation rate to the property in question although it was not new and its price purported to reflect existing depreciation. Thus, the government in effect asserts that there has been an underdepreciation.[15] New York denies this. It says that the group method,[16] under which the property was depreciated at rates similar to those applying to like property, takes into account the fact that some property may remain in service for a shorter time than is expected and that some property may remain serviceable for a long time. Under the group method, it insists, such inequalities are averaged out in the rate fixed for the group as a whole.

The effect of appellee's argument would be to render the Commission powerless to write off much of the inflation caused by the original accounting in this case. For, as has been pointed out, the inflation is not "removed as property is retired. . . . When property is retired its cost is credited to the proper asset account and (neglecting the effect of salvage) the same cost is debited to depreciation reserve, and the resultant change in book value is zero. Thus the effect of retiring an inflationary asset item is to create a deficiency in depreciation reserve equal to the inflation formerly existing in the asset account."[17]

Moreover, it would seem clear that rates established under the group method of depreciation are not properly applied to property purchased which is *known* not to have as long an expected serviceable life as property of the same sort purchased when new. It is true that testimony appears in the record that at the time of the purchase of the property "the question of the effect of this purchase on the depreciation rates, and whether or not the depreciation rates should be increased so [as] to allow for the fact that the property purchased was not new and, therefore, had less than the full life remaining" arose and was considered. True also, testimony showed it was decided at the time "that without any increase in the rates the rates that were already in effect would be ample to provide for retirement of the property purchased." Nevertheless the Commission apparently found that such was not the case.

We cannot say that such a conclusion was erroneous.[18] And it may be

[15] The brief amicus curiae of the New York Public Service Commission states: "A write-up or inflation of the net book cost may be brought about either by an inflation of the book cost figure on the asset side or by a reduction of the related depreciation figure on the liability side.

"In this case, the inflation was accomplished principally by an understatement of the related depreciation."

[16] See text at note 3.

[17] Opinion of the New York Public Service Commission, 1 NY PSCR (1943) 569, 590.

[18] The Commission stated: "New York attempted to counter these conclusions with the contention that its depreciation reserve *as a whole* is now in excess of requirements and consequently the inflation introduced through the accounting for the transactions in question has been offset by an excess in the reserve resulting from other causes; and that, further, unless the Commission can show that the re-

added, in support of the Commission's desire to put New York's accounts on an original cost basis, that one of the effects of original cost accounting will be not to require New York in the future to do what it should have done in the past, at least under the Federal Communications Commission system of accounts. ". . . The depreciation rate [under original cost accounting] applicable to a specific class of plant can be based on an estimate of total service life. There is no necessity to depreciate part of the account (constructed plant) on a total service-life basis and another part (acquired properties) on a remainder-life basis."[19]

[3] Appellee further urges that so much of the Commission's order as affects property already retired is improper, because the sole purpose of original cost accounting is to show separately the amount by which the price paid by the accounting company for property now in service exceeded the original cost of that property. But the purposes of an original cost system of accounting are broader. Under such a system the inflation in accounts not only may be segregated but may also be written off.[20] Northwestern Electric Co. v. Federal Power Commission (1944) 321 US 119, 123, 124, 88 L ed 596, 600, 601, 52 PUR (NS) 86, 64 S Ct 451; California Oregon Power Co. v. Federal Power Commission (1945) 60 PUR(NS) 189, 150 F2d 25, 27, 28.

[4–7] The final question is whether the order falls within the decision in American Teleph. & Teleg. Co. v. United States (1936) 299 US 232, 81 L ed 142, 16 PUR(NS) 225, 57 S Ct 170. That case involved an attempt to set aside an order of the Federal Communications Commission prescribing a uniform system of accounts for telephone companies. The companies objected to the order's "original cost" provisions as preventing them " 'from recording their actual investment in their accounts' with the result that the accounts do not fairly exhibit their financial situation to shareholders, investors, tax collectors and others." The court replied that such a consequence would not be entailed, but that under the order only such an amount would be written off "as appears . . . to be a fictitious or paper increment." 299 US at p. 240, 16 PUR(NS) at p. 230, 81 L ed 149, 57 S Ct 170. How-

serve as a whole is deficient no correcting entry which would increase the reserve can be required. But the question as to whether the depreciation reserve, taken as a whole, is adequate is irrelevant to the issues herein. No challenge is here being made to the adequacy of the depreciation reserve as a whole. This line of argument represents an attempt to offset one error by another. If New York's depreciation reserve is in excess of requirements, it means that New York has been making excessive charges to operating expenses for depreciation." 52 PUR(NS) 101, 116, 117.

It has been urged that, even if the Federal Communications Commission was correct in ordering the inflation in the accounts of New York written off the books, that inflation has been reduced by some fraction of the depreciation previously taken, that is, prior to elimination of the inflation, even though the group method of depreciation was employed. That point, whatever its merits, was not made until the case reached this court. Accordingly we do not consider it.

[19] Colbert, Advantages of Original Cost Classification of Plant, Part I, 1945, 35 Public Utilities Fortnightly, 333, 343.

[20] For obvious reasons, the utility companies have not objected so much to the segregating of the difference between the cost to the accounting company of property acquired and original cost less depreciation as they have to removing this difference from the books. See Kripke, A Case Study in the Relationship of Law and Accounting: Uniform Accounts 100.5 and 107 (1944) 57 Harvard L Rev 433, 438 ff., especially at 445.

ever, to avoid possible misunderstanding and to give assurance to the companies, the court requested the assistant attorney general appearing for the government to reduce to writing his statement in that regard in behalf of the Commission. This he did, informing the court that "the Federal Communications Commission construes the provisions of Telephone Divison Order No. 7-C, issued June 19, 1935, pertaining to Account 100.4" as meaning "that amounts included in Account 100.4 that are deemed, after a fair consideration of all the circumstances, to represent an investment which the accounting company has made in assets of continuing value will be retained in that account until such assets cease to exist or are retired; and, in accordance with paragraph (C) of Account 100.4, provision will be made for their amortization." This statement the court accepted "as an administrative construction binding upon the Commission in its future dealings wth the companies." The court also noted that the case was to be distinguished from New York Edison Co. v. Maltbie (1935) 244 App Div 685, 9 PUR(NS) 155, 281 NYS 223, affirmed (1936) in 271 NY 103, 15 PUR(NS) 143, 2 NE2d 277, "where under rules prescribed by the Public Service Commission of New York, there was an inflexible requirement that an account similar in some aspects to 100.4 be written off in its entirety out of surplus, whether the value there recorded was genuine or false."

The district court thought the order in the instant case was erroneous "in view of the stipulation of these same defendants made in American Teleph. & Teleg. Co. v. United States, *supra*; certainly in the absence of proof that the excess of price over the seller's net book cost was not a 'true increment of value.' There has not been any determination based upon a fair consideration of all the circumstances in accordance with the stipulation mentioned, nor upon the evidentiary circumstances referred to in the opinion of the Supreme Court." *Supra*, 55 PUR(NS) at p. 329, 56 F Supp at p. 938.

We think this misconceives the "stipulation's" purport and effect. When the Federal Communications Commission finds, after full hearing and on evidence which sustains the finding, that part of the cost on the books of a company is due to a profit made by an affiliate or a parent at the time when the affiliate or parent has transferred property to it, the Commission has determined, "after a fair consideration of all the circumstances" in full compliance with the "stipulation's" reservation that there has been no true investment but only a "fictitious or paper increment" within the meaning of the American Teleph. & Teleg. Co. Case.[21] The stipulation did not foreclose, rather it in terms reserved this inquiry. "For an intercorporate profit which

[21] All relevant facts pertaining to the transaction were before the Commission. The Commission found that there was no real increment of value to the assets as a result of the transfer and that the inclusion of any write-up would introduce "inflationary elements" into the plant accounts which in time would be "improperly reflected in the depreciation expense account as an alleged operating cost." No other findings were necessary. And the rejection by the Commission of the company's contention that reproduction cost less depreciation was the true criterion of "value" was plainly no error of law.

upon a consolidated income statement of the affiliated group would disappear entirely is too lacking in substance to be treated as an actual cost." Pennsylvania Power & Light Co. v. Federal Power Commission (1943) 52 PUR(NS) 275, 281, 139 F2d 445, 450. Indeed the opinion in the American Teleph. & Teleg. Co. Case, *supra*, said: "There is widespread belief that transfers between affiliates or subsidiaries complicate the task of rate making for regulatory commissions and impede the search for truth. Buyer and seller in such circumstances may not be dealing at arm's length, and the price agreed upon between them may be a poor criterion of value." 299 US at p. 239, 16 PUR (NS) at p. 230.

It is argued, however, that the use of the word "may" was intended to put the burden on the Commission to find that in such interaffiliate or parent-subsidiary transactions the price actually was a poor criterion of value. That is not our understanding. In the first place, the act imposes upon the company, not on the Commission, the burden of proof to justify accounting entries. Neither the court nor the Commission, in action taken with relation to the "stipulation," can be thought to have undertaken to shift this burden in the teeth of the statutory provision, as the full terms of the "stipulation," set forth below,[22] disclose. We think that the use of the conditional was meant to indicate no more than that this court was not taking sides in the debate in accounting circles as to whether the price agreed upon between affiliates was or was not in fact a poor criterion of value. To resolve that discussion was and is for the regulatory commissions and not for the courts. We repeat that for a court to upset an accounting order it must be " 'so entirely at odds with fundamental principles of correct accounting' . . . as to be the expression of a whim rather than an exercise of judgment." 299 US at pp. 236, 237, 16 PUR(NS) at p. 228. The order in this case is not of that character.[23]

The judgment is reversed.

STONE, CJ., dissenting:

Mr. Chief Justice Stone is of opinion that the judgment should be affirmed on the ground, as the court

[22] The entire statement (sometimes called "stipulation") of the government in the American Teleph. & Teleg. Co. Case in the instant case) reads as follows:

"The Federal Communications Commission construes the provision of Telephone Division Order No. 7-C, issued June 19, 1935, pertaining to Account 100.4, as follows:

"(1) That amounts included in Account 100.4 that are deemed, after a fair consideration of all the circumstances, to represent an investment which the accounting company has made in assets of continuing value will be retained in that account until such assets cease to exist or are retired; and, in accordance with paragraph (C) of Account 100.4 provision will be made for their amortization.

"(2) That when amounts included in Account 100.4 are deemed, after a fair consideration of all the circumstances, to be definitely attributable to depreciable telephone plant, provisions will be made for amortization of such amounts through operating expenses, through the medium of either Account 613 or Account 675.

"The Commission believes that the foregoing construction of its order is that which it presented to the district court through he affidavits of its witnesses."

[23] The Federal Power Commission, the Securities and Exchange Commission, and some state Commissions (see the opinion of the New York Public Service Commission in the instant case) have taken the same position concerning interaffiliate transactions as has the Federal Communications Commission. See Kripke, A Case Study in the Relationship of Law and Accounting: Uniform Accounts 100.5 and 107 (1944) 57 Harvard L Rev 693, 705–708.

below held, that petitioner, the Federal Communications Commission, is bound by and has not complied with the stipulation to which it was a party and which this court approved in American Teleph. & Teleg. Co. v. United States (1936) 299 US 232, 240, 241, 81 L ed 142, 149, 150, 16 PUR(NS) 225, 231, 57 S Ct 170. In that case it was contended that the Federal Communication Commission's uniform system of accounts for telephone companies would require that all amounts representing excess of purchase price paid by the telephone company to its parent company over the seller's original cost be written off.

The court held that under that system, applied to the account here in question, which had been lawfully established under Interstate Commerce Commission regulations, only such amount could be written off as appeared "to be a fictitious or paper increment," and not "a true increment of value." To avoid "the chance of misunderstanding and to give adequate assurance to the companies [including respondent here] as to the practice to be followed," the court requested the Assistant Attorney General to reduce his statements to that effect to writing in behalf of the Commission. He did this and informed the court "that 'the Federal Communications Commission construes the provisions of Telephone Division Order No. 7-C, issued January 19, 1935, pertaining to Account 100.4' as meaning 'that amounts included in Account 100.4 that are deemed, after a fair consideration of all the circumstances, to represent an investment which the accounting company has made in assets of continuing value will be retained in that account until such assets cease to exist or are retired; and, in accordance with paragraph (C) of Account 100.4, provision will be made for their amortization.' "

Before the Commission could rightly direct that the assets in that account, which have not been retired, be written off, the stipulation required it to find, after a "fair consideration of all the circumstances" that the difference between the original cost and the price claimed to have been paid is not "a true increment of value." This the Commission has not done. In the face of its stipulation it may not assume, without a finding based upon evidence, that there is no "true increment of value" to the assets which respondent purchased over the cost to the seller, merely because respondent purchased the assets from its parent corporation.

The judgment should be affirmed.

Mr. Justice Black, Mr. Justice Reed, and Mr. Justice Jackson took no part in the consideration or decision of this case.

MICHIGAN PUBLIC SERVICE COMMISSION

Re Michigan Bell Telephone Company

T-252.90
December 13, 1945

INVESTIGATION *of rates and charges of intrastate telephone company; reductions ordered.*

Valuation, § 28 — Rate base — Book cost.

1. Book cost of telephone plant devoted to intrastate operations, when appearing to be closely related to actual, legitimate, original cost of property, was used in arriving at the rate base, p. 80.

Valuation, § 85 — Accrued depreciation — Deduction from book cost.

2. Accrued depreciation was deducted from gross plant in service in arriving at the rate base of a telephone company, p. 80.

Valuation, § 104 — Accrued depreciation — Reserve as measure.

3. A depreciation reserve appearing to be reasonable was used as representative of accrued depreciation on telephone plant in service, p. 81.

Valuation, § 293 — Working capital — Effect of advance billing.

4. Weight should be given to the fact that a telephone company is able to and does bill its subscribers in advance of rendering service, in considering working capital requirements, p. 81.

Valuation, § 290 — Working capital — Accruals making allowance unnecessary.

5. A separate allowance in the rate base for working capital is unnecessary when a telephone company bills subscribers in advance and has available accruals for such items as taxes, interest, dividends, rents, and customer deposits, which items in excess of payments will supply adequate bank balances, p. 81.

Return, § 25 — Reasonableness — Comparative return.

6. Consideration is given to the return being made on investments in other business undertakings which are attended by corresponding risks and uncertainties, in determining a reasonable return, p. 81.

Return, § 25 — Reasonableness — Speculative profits.

7. A public utility has no right to such profits as are realized or anticipated in highly profitable enterprises or speculative ventures, p. 81.

Return, § 26 — Cost of money.

8. Historical cost of money to a utility and the current cost of such money are considered in determining a reasonable return, but more weight is given to the determination of current cost of money on the basis of cost to comparable associated companies within the telephone system, p. 82.

Return, § 26 — Cost of money — Capital structure.

9. A capital structure of 30 per cent of bonded debt and 70 per cent of common stock for an intrastate telephone company was deemed reasonable in

estimating current cost of money as a factor in determining return allowance, p. 82.

Return, § 26 — Cost of money — Financing cost.

10. Allowance is made for commission to underwriters and other costs in determining the cost of security issues for the purpose of determining a reasonable return, p. 82.

Return, § 26 — Reasonableness — Cost of money.

11. The total current cost of money to an intrastate telephone company was held to be properly determined within reasonable limits by the earnings-price ratio for equity money and the current cost of debt money, p. 82.

Return, § 24 — Reasonableness — Attraction of capital.

12. Ability to attract capital in competition with other investment opportunities is a test of the reasonableness of the rate of return, p. 82.

Return, § 111 — Telephone company.

13. A return of 4.72 per cent was considered reasonable for an intrastate telephone company, after a consideration of pertinent factors relating to rate of return in comparison with similar enterprises, historical earnings, effect of current economic conditions, and ability to attract capital, p. 82.

Return, § 26 — Cost of capital — Charges on temporary funds.

14. A return allowance should be sufficient to provide carrying charges on temporary funds held available for future use, and also to insure maintenance of credit and attraction of new capital under changing economic conditions, p. 82.

Expenses, § 2 — Duty of Commission.

15. The Commission in a rate proceeding must determine whether or not any unnecessary element of expense is being charged to the consuming public, p. 83.

Expenses, § 87 — Payment to parent company — License contract — Telephone company.

16. Findings should be made with respect to the cost of services rendered to an intrastate telephone company by a parent company, under an agreement covering services, licenses, and privileges, where the contract calls for a payment upon the basis of 1½ per cent of gross earnings (less uncollectible revenue and revenues from teletypewriter exchange service) while there is no correspondence between the operating revenues and the expense incurred by the parent on behalf of the operating company, p. 84.

Expenses, § 84 — Charges by parent company — Services covered.

17. Services which may be charged by a parent company to an operating company must be limited to services of an operating nature as distinguished from managerial, executive, and policy-forming services, p. 84.

Expenses, § 87 — Charges by parent company — Development and research costs.

18. Development and research costs properly chargeable by a parent company to operating telephone companies, when consisting of billing to the parent by telephone laboratories, should be limited so as to charge the operating companies with research and development work not identified with apparatus or equipment, such as basic research, work on interference prevention, and methods of maintaining or operating telephone plant, and excluding expenses in connection with projects undertaken with a view to

developing communication apparatus to be manufactured by an affiliated manufacturing company, p. 85.

Expenses, § 87 — Charges by parent company — Cost of holding funds to make loans.

19. The cost to a parent company of holding funds in readiness to make loans to a subsidiary telephone company is not an operating expense to it, includable in charges to the subsidiary, but is a cost of capital, p. 86.

Expenses, § 87 — Charges by parent company — Tax costs.

20. Charges by a parent company to a telephone company for services under a license contract should include only such taxes as would be payable if the parent company's general departments were a service company without investment interest, including New York city sales tax, use and occupancy taxes, Federal excise tax, and social security taxes, but excluding state franchise tax, p. 87.

Commissions, § 31 — Jurisdiction — Legal questions.

21. The Commission, in order to function as an administrative body, must venture preliminary answers to certain judicial questions, and more especially such of those questions as relate to the extent of Commission jurisdiction, p. 89.

Rates, § 82 — Powers of Commission — Substitution of rates.

22. The Commission, upon finding that existing telephone rates and charges are unjust and unreasonable, has power to determine, and by order fix and order substituted therefor, such rates and charges as are just and reasonable, p. 90.

By the COMMISSION:

History of Proceedings

These proceedings are an investigation of the rates and charges of the Michigan Bell Telephone Company. The Michigan Bell Telephone Company is a public utility engaged in the business of furnishing telephonic service within the state of Michigan. As such it is a public utility and subject to the jurisdiction of this Commission.

The Michigan Bell Telephone Company does both an interstate and intrastate business. These proceedings relate only to the business done wholly within the state of Michigan.

For the sake of brevity, hereinafter the Michigan Bell Telephone Company may be referred to as the company.

On the 18th day of May, 1944, the company, together with other utilities within this state, was given notice that, if it were reasonably certain to incur liability during the year 1944 for Federal excess profit taxes, all of its rates and charges were subject to adjustment as of January 1, 1944, to avoid the incurring of any such liability and a subsequent payment of any such tax.

On August 4, 1944, this Commission requested the company to furnish information in relation to its operations for the year 1944, and this information was furnished about the 14th day of September, 1944. It disclosed that the company was accruing, for the year 1944, the sum of $4, 402,000 to pay excess profit taxes related to its 1944 operations.

On October 3, 1944, this Commission gave notice to the company that, on October 17th, it would begin an investigation of the rates of the company. Hearings were begun on that date and were held intermittently through the 26th day of December, 1944.

On December 28, 1944, this Commission issued an interim order which required the company to reduce its gross revenues, attributable to its intrastate operations, $3,500,000, to set aside such a sum of money, and to make a refund of the same to its customers.

The company appealed, and the circuit court for the county of Ingham, in chancery, held that this Commission did not possess the power to make the interim order; and, on the 12th day of June, 1945, a decree was entered, setting aside the order.

Pending the hearing and determination of the cause, a temporary injunction issued, restraining the Commission, and the funds involved were held under the jurisdiction of the court. On August 9, 1945, an appeal was taken to the Michigan supreme court by this Commission and the city of Detroit, which had intervened as a defendant in the court proceedings. Such appeal is still pending and is undetermined.

On May 25, 1945, the Commission gave the company notice that the hearings before it would be resumed. These hearings began on June 25, 1945, and were concluded on July 11, 1945.

Relation of Michigan Bell Telephone Company to the American Telephone and Telegraph Company

The Michigan Bell Telephone Company is a Michigan corporation. All of its shares of stock, other than the qualifying shares held by its directors, are owned by the American Telephone and Telegraph Company. Such stock ownership may subject the company to domination by the parent company. In these proceedings we have considered and treated the Michigan Bell Telephone Company as a separate, distinct corporation, excepting only those phases of the case where it was necessary to determine whether or not the control of the parent company had in fact been exercised and then only to the extent necessary to determine whether or not the end result was unreasonable as viewed from the standpoint of the public.

Rate Base

[1, 2] In these proceedings no testimony was offered or introduced as to the value of the property employed by the company in rendering intrastate telephone service other than book value. The company maintains a system of accounts as prescribed by this Commission which should provide a book value closely related to the actual, legitimate, original cost of the property. While these costs have not been audited by this Commission, we feel it safe to assume that the company has not understated its cost of plant and made use of its figures in this case.

The book cost of telephone plant devoted to intrastate operations is, as of June 30, 1945, $230,090,000.

In arriving at the rate base in this case, from the above-determined gross plant in service, we deduct the accrued depreciation.

Depreciation

[3] There is no disagreement between the Commission's staff and the company as to the reasonableness of the annual charge for depreciation nor as to the reasonableness of the present reserve. Therefore, $72,920,000, which is the amount in the depreciation reserve as of June 30, 1945, as shown by the monthly reports of the company, will be used as representative of the accrued depreciation on plant in service.

Working Capital

[4, 5] It is customary in rate proceedings to make a separate allowance for working capital. Any consideration of the working capital requirements of the Michigan Bell Telephone Company should give weight to the fact that this company is able to and does bill its subscribers in advance of the rendering of service. All customers coming within the class designated upon the books of the company as Monthly and Miscellaneous Charges (01) are prebilled. This class is a subdivision of the account "Subscribers' Station Revenues" (500). On a monthly basis the amount of such prebilling is approximately $3,500,000. In addition to this the company has available its accruals for taxes, interest, dividends, rents, customer deposits, etc. These items in excess of payments will supply adequate bank balances. Giving weight to all of these, we determine and find that the company has no need for a separate allowance as working capital.

Rate of Return

[6, 7] In determining a reasonable return to the company, we have given consideration to the return being made on investments in other business undertakings which are attended by corresponding risk and uncertainties. It is generally recognized that a utility has no right to such profits as are "realized or anticipated in highly profitable enterprises or speculative ventures."

In presenting a standard to be used as to the return of like business undertakings, the company contended that the earnings requirement should be based upon the equity capital requirements for 1944 of the entire Bell System which consists of the American Telephone and Telegraph Company and all of the Associated Companies. According to the testimony presented by the company the over-all equity requirement of the Bell System was a return of 8.69 per cent.

The company also submitted a comparison of the return made on net worth between the Bell System and approximately 1,200 manufacturing corporations. The purpose of such comparison was to point out the similarity in trends. It was admitted that there might properly be some difference in the level of the earnings. The gist of the company's contention is that the levels of industrial earnings and the earnings of the Bell System in previous years maintained a fairly constant ratio and that at the present time a similar correspondence should be maintained. However, we are unable to agree that there is a function or relationship between earn-

ings made by speculative concerns and that allowed to a regulated company.

[8–14] In the consideration of the cost of money to a utility it is also customary to treat of the historical cost of such money and the current cost of such money.

The testimony as to historical cost presented by the company related only to the over-all costs of the Bell System. While consideration is given to such testimony in these findings, more weight is given to the determination of the current cost of money to the Michigan Bell Telephone Company on the basis of cost to certain comparable associated companies within the system. The companies were chosen because their securities had been dealt with in the open market and because the ratio between their equity and debt securities appeared to be reasonable. Consideration was also given to a group of gas and electric utilities which were considered as representative of regulated industries.

In estimating the current cost of money it is necessary first to determine what securities are to be offered upon the market. We fully appreciate the difference in the return demanded upon stocks and those demanded upon bonds, etc. Under conditions which now exist and which we believe will prevail for the reasonable future, a capital structure of 30 per cent of bonded debt and 70 per cent of common stock for the Michigan Bell Company would be reasonable.

In determining the cost of such issues, we have made allowances for the commission to underwriters and other costs. After a thorough study of the testimony it is our opinion and we find that the total current cost of money is determined within reasonable limits by the earnings-price ratio for equity money, and the current cost of debt money.

In the case of the Michigan Bell Telephone Company, owing to the fact that its securities are not on the open market, it is not possible to consider such data as related to itself; therefore, it has been necessary to secure such data from other companies possessing like characteristics of risk, stability of income, future prospects and other factors affecting the return requirement. For example, a study of the New England Telephone and Telegraph Company's costs of money reveals that on a basis of present-day requirements the costs would be:

	Per Cent	Rate	Cost
Bonds	30	2.62%	.79%
Common stock	70	5.29%	...
Cost to company allowing discount of 6%	...	5.61%	3.93%
Total Cost	100%		4.72%

A study has been made between the levels of the reported Michigan Company earnings and the American Telephone and Telegraph Company earnings, in order to determine the reasonableness of any given rate of return in relation to past earnings. The earnings on the net plant investment of the Michigan Bell since 1936 have been relatively high and in the last three years especially so, when they are considered before excess profit taxes. On the basis of estimated results for 1945, earnings on the latter basis will be approximately 8.52 per cent on net plant.

The average of earnings on net worth for the period 1928–1941 was 5.63 per cent. On the basis of the

relation of return on net plant being slightly less (or about 98 per cent on net worth), the average for 1928-1941 for earnings on net plant would be 5.52 per cent. After 1941 the deduction of the Federal excess profit taxes did not change the average materially so far as the income actually available to securities holders was concerned. The average earnings on net plant were 5.51 per cent during the last three years.

The ability to attract capital in competition with other investment opportunities is a test of the reasonableness of a rate of return. This does not mean that such competition is within the speculative field. The investor does not look to the securities of public utility operating companies for the larger speculative profits that come from industrial securities. The return demanded by the investor depends upon his evaluation of the risk involved. The securities of the regulated utility offer a possibility of long-term prospective earnings with slight risk, if any, of a loss of principal. The risk of loss is even less where the utility under consideration is well seasoned through years of experience; therefore, the competitive field of the Michigan Bell Telephone Company in the money market is confined to other like business undertakings.

We have considered all of the pertinent factors relating to the rate of return, in comparison with similar enterprises, historical earnings, effect of current economic conditions, and the ability to attract capital. We have evaluated those factors and we find that the current cost of money to the Michigan Bell Telephone Company is not greater than that of the New England Telephone and Telegraph Company, which we have indicated previously as being 4.72 per cent.

We are aware that the current cost of capital is not the only element that must be considered in a determination of the rate of return. Enough should be allowed to provide carrying charges on temporary funds held available for future use. Also, sufficient return should be allowed to insure maintenance of credit and the attraction of new capital under changing economic conditions.

Operating Expenses

[15] One of the duties of this Commission is to determine whether or not any unnecessary element of expense is being charged to the consuming public. During these proceedings the charges made by the company for depreciation, license contract services, and Federal excess profit taxes have been questioned.

Depreciation Expense

In the first phase of these proceedings, during 1944, certain excess depreciation charges as related to the increased life of plant because of an inability to make property retirement on account of the war, was brought to the attention of the company and it voluntarily reduced depreciation charges $250,000 for the year 1944, and a similar reduction is indicated for the year 1945, according to the monthly reports made to the Commission.

Without a comprehensive study of the depreciation practices it is impossible to ascertain whether further changes should be made relative to depreciation expense. We are of the

opinion that these proceedings should be concluded as promptly as possible and the benefits of any reduction in the rates be passed immediately to the consumers. For this reason and solely for the purpose of this order, we are accepting for the purpose of determining income the company's current annual charges to depreciation without having the benefit of a comprehensive study of its depreciation practices. It is possible that when such a study is made further changes will be necessary in relation to depreciation expense.

License Contract

[16, 17] The Michigan Company, during 1944, charged to operating expense $1,007,000, upon the basis of 1½ per cent of its gross earnings (less uncollectible revenue and revenues from teletypewriter exchange service) and paid this sum to the American Telephone and Telegraph Company under an agreement covering services, licenses, and privileges, dated July 17, 1930, or the so-called "License Contract." It is estimated that for the year 1945 the company will pay upon the same basis $1,090,000.

There is no correspondence between the operating revenues of the Michigan Company and the expense incurred by the American Telephone and Telegraph Company on behalf of the Michigan Company in rendering the contract services. For this reason, findings with respect to the cost of these services to the American Company should be made.

The Michigan Company has made and presented a study which consists of a series of allocations and apportionments upon which it bases a claim that the cost to the American Company of rendering services to the Michigan Company under the contract, in 1944, was $960,000.

During 1944, the total cost for the departments of the American Company was stated as $21,239,830. Of this amount, $1,262,170, termed "nonlicense" cost, was deducted as not being assignable, in the judgment of the American Company officials, to the services covered by the license contract. The balance, or $19,977,660, was thus determined as being the American Company's net departmental costs of rendering the "license contract services." This amount was then apportioned between the American Company's Long Lines Department and the licensee companies. On such basis there was allocated to the Michigan Bell $781,153 of the 1944 departmental costs.

In addition to the departmental costs, other costs are alleged by the American Company to be incurred by it on behalf of the "licensee" companies, and properly chargeable to them under the contract, among which costs are: taxes, net cost of carrying investment in furniture and office equipment used in rendering license contract services, and the net cost of holding funds available to meet cash requirements of licensee companies. Of these alleged costs, $178,986 was allocated to Michigan Company.

In our consideration of the costs of the holding company reasonably assignable to the operating company, for the purposes of this order we adopt the following principle: Services which may be charged by the parent company to the operating companies must be limited to services of an oper-

ating nature as distinguished from managerial, executive, and policy-forming services.

The operating expenses of the Michigan Bell Company as a separate corporation include, and in this report we allow, the costs of maintaining by it of a corporate organization complete with board of directors, general officers and staff, and all the other attributes of a complete organization.

It is against the interest of the consumers that practically all of the salaries and expenses of the American Company's general department officers and executives be allocated to the costs of rendering the license contract services. Their duties consist largely, and in some cases almost entirely, of managerial and policy-forming activities.

It is difficult to segregate the managerial, executive, and policy-forming activities and related costs from activities of an advice and assistance nature. Since no cost records are maintained, and the costs of specific departmental functions are not available, for the purposes of this order we accept the company's allocations of its general departments' expenses, with the exceptions set forth in detail below.

Testimony offered in this case indicates that the cost of the following departments should be borne to a greater extent by the American Company than now assumed by it, inasmuch as a considerable portion of their functions must be considered as managerial, executive, and policy forming, and not of a service nature. We adopt the following allocations to the Michigan Company's expenses:

	Claimed	Allowed
Administration—A	$20,491	$18,002
Administration—B	6,459	5,337
Administration—M	11,595	10,973
Administration—W	1,083	909
Secretary	1,836	None
Treasurer	65,178	None
General Service Bureau	17,800	15,636
Personnel	53,951	48,692

[18] American Company's development and research departmental costs consist entirely of the billing to the American Company by the Bell Telephone Laboratories for work considered as "fundamental work in research, investigation and experimentation in the development of plans, methods, systems, and ideas designed to improve telephone service and to promote safety, economy, and efficiency in the equipment, construction, and operation of the telephone plants . . ."

During 1944 the total departmental costs for development and research charged to the American Company were $8,036,566. Of this amount, $7,743,861 was allocated to the cost of rendering license contract service, of which $279,675 was assigned to the Michigan Company.

The apportionment of the expenses of the Laboratories between the American Company and the Western Electric Company is determined by the American Company. The criteria appears to be:

Work charged to Western Electric Company is work largely concerned with near-at-hand problems necessary for the fabrication of devices and apparatus, and which can be fairly immediately incorporated in Western's products.

Work charged to the American Company is work of a fundamental character because it deals with basic knowledge, and in general consists

of the first application of scientific knowledge to the communications art.

It is apparent from an examination of laboratory cases, that wide latitude is exercised in the determination of the allocation of the costs of specific cases between Western Electric Company and the American Company.

It appears more reasonable to assign to Western Electric Company all laboratories' expenses in connection with projects undertaken with a view to develop communication apparatus to be manufactured by Western Electric Company. Research and development work not identified with apparatus or equipment, should be allocated to the American Company, such as: Basic research, work on interference prevention, and methods of maintaining or operating telephone plant.

In consideration of the foregoing, we find approximately $1,253,000 as the amount of development and research costs properly chargeable to the operating telephone companies. This is the sum of items 12, 14, and 16 shown on schedule 1 of Exhibit 148. Applying to this sum the factors applied to items 1 to 6 on page 2 of company's Exhibit 126, indicates that $45,258 should be allowed as expense of the Michigan Company.

With respect to nondepartmental costs, the net cost of carrying investment in furniture and office equipment used in rendering license contract services, which consist of insurance, depreciation, taxes, maintenance, and interest at 6 per cent on the investment was computed as $21,483 for 1944. Of this amount, $821 was assigned to Michigan, which will be allowed for the purposes of this order.

[19] The net cost of holding funds available during the year to meet cash requirements of licensee companies assigned to Michigan for 1944 was $140,326. This charge is related to the money lending activities of the American Company.

Of the American Company's approximately $248,000,000 total cash and temporary cash investments, approximately $2,746,000 was alleged to be held for future use by the Michigan Company. The difference between the interest earned on this money and the "cost" of the money to the American Company, or the net of 5.11 per cent, which when applied to the $2,746,000 results in the $140,326 allocated to Michigan for this service.

There obviously is no provision in the license contract requiring the American Company to make loans to licensees. The American Company makes advances when it choses to do so. When loans are made, interest is charged at 3.92 per cent. The loans are a temporary step by the American Company toward maintaining its equity ownership of the Michigan Company. When viewed in this relationship, it is difficult to see why the American Company is entitled to compensation beyond reasonable interest for the funds actually advanced.

The allocation of the American Company's funds held available to the Michigan Company is upon the basis of the composite percentage ratio of: Michigan Plant in Service Account as of December 31, 1944, to the System's; and Michigan's 1944 Gross Plant Additions, to the System's; or a composite ratio of 4.1 per cent.

There is no discernible relationship between the sum so computed and Michigan's future cash requirements for planned construction.

The cost (to the American Company) of holding funds in readiness to make loans is not an operating expense to it, but is a cost of capital. In our allowance for return under present conditions for the Michigan Company, provision is made, over the actual present cost of money, for a return on a reasonable amount of funds to be held available for construction purposes.

[20] Taxes which are assigned principally to cost of rendering license contract services consist of:

Social security	$150,993
New York state franchise	621,758
New York state excise	157,504
New York city sales, use, and occupancy	25,971
Federal excise	33,782
Massachusetts franchise	4,394
Total	$994,402

Only such taxes as would be payable were the American Company's general departments a service company without investment interest may be included in the service costs. These are determined to be the New York city sales, use and occupancy taxes, the Federal excise tax, and social security taxes.

In view of the foregoing we find that only $210,746 may be reasonably assigned to the license contract cost of the American Company for taxes. Applying to this sum the factors used by the company in Exhibit 126, indicate that $7,094 is allowable as the license contract tax expense of the Michigan Company.

Our determination of the avoidable elements of expense included in the American Company's computation of alleged license contract costs of Michigan Company has been set forth above, and we find approximately $475,671 as the cost to the American Company of the license contract service rendered to the Michigan Company, as shown by the following table:

Cost of Services Rendered to Michigan Company	
Development and research	$45,258
Operation and engineering department	161,301
Personnel department	48,692
Information department	62,387
Legal department	29,762
Comptroller's department	69,598
Treasury department	None
Secretary's department	None
General service bureau	15,638
Administration—M department	10,973
Administration—W department	909
Administration—B department	5,337
Administration—A department	18,002
Furniture costs	720
Taxes	
Social security	4,966
New York city, Federal excise state franchise	2,128
Total Company	$475,671
Intrastate Allocations (91.83%)	436,809

Excess Profits Tax

We find that the company is accruing approximately $7,800,000 for excess profit taxes for the year 1945. We subsequently find that, of this amount, approximately $3,000,000 is avoidable.

Revenue Reduction

Examination of all of the evidence in this case, therefore, brings us to the conclusion that approximately $500,000 of license contract costs and $3,000,000 of excess profits are truly avoidable as operating expenses, totaling approximately $3,500,000.

After a revenue reduction of $3,500,000 applying to 1944 business the

company will have available to it $8,299,000 for return, or 5.16 per cent on the 1944 average net investment in plant in service, and after a $3,500,000 revenue reduction applying to its 1945 business the amount available for return will be $8,797,000, or 5.60 per cent on the 1945 rate base. A $3,500,000 annual revenue reduction applied to 1946 business will result in $11,436,000 for return, or 7.28 per cent on the net investment. These determinations are illustrated by the following table:

Estimated Operating Results After $3,500,00 Annual Revenue Reduction
($000)

	1944	1945	1946
Plant in service	$226,391	$230,090	$230,090
Depreciation reserve	65,832	72,920	72,920
Net plant investment	160,559	157,170	157,170
Operating revenues	62,786	69,540	69,813
Current maintenance	12,486	13,041	13,060
Depreciation expense	8,036	8,162	8,183
Traffic expense	9,720	11,972	12,406
Commercial expense	6,047	6,481	6,694
General services	437	437	437
Taxes (Exclu. income tax)	4,119	4,223	4,310
Other operating expenses	6,212	6,657	6,755
Income taxes			
Normal and surtax	5,085	5,085	6,532
Excess profit tax	2,345	4,685	.....
Total operating expenses	54,487	60,743	58,377
Net operating income	8,299	8,797	11,436
Rate of return	5.16	5.60	7.28

The results obtained after a reduction in annual revenues of $3,500,000 still allows this company an adequate rate of return upon its intrastate business. Such a reduction in revenues is conservative, and in the determination of the reduction generous allowances have been made throughout.

On the basis of the above determined intrastate investment, revenues, and expenses, after $3,500,000 annual revenue reduction the financial requirements of the company interstate and intrastate) will be met as follows:

($000)

	1944	1945	1946
Net operating income	$10,052	$10,582	$12,560
Other income	42	42	42
Income deductions	402	402	402
Fixed charges	41	41	41
Net income	9,651	10,451	12,560
Per cent to common stock	6.03	6.53	7.60
5 per cent dividend requirement	8,000	8,000	8,000
Available for surplus	1,651	2,451	4.159

From the foregoing, it is apparent that after the reduction in revenue there will be enough for all reasonable operating expenses and also for the capital costs of the business, including service on the debt, dividends on the stock, and a substantial amount for surplus. The return to the equity owner will be commensurate with the returns on investments in other enterprises having corresponding risks, and will be sufficient to assure confidence in the enterprise, maintain its credit and attract capital.

A Consideration as to the Unreasonableness of Rates as of January 1, 1944, and Subsequent Dates

The circuit court for the county of Ingham, in chancery, in the suit brought to review our interim order (being the order of December 28, 1944) held that we were without power and authority to make such an order. At the time of the settlement of the decree through our counsel, the court's attention was directed to the fact that answers to certain definite questions would aid us in the administering of the utility laws of this state. Considering our request, the court said:

"The basic inquiry, it seems to me, was, as the opinion indicates, whether the Commission had the power, under the laws of the state relating to the subject matter, to make the order that actually was made here. . . . I feel that I have passed on the basic question that was involved, the question of the authority or lack of authority on the part of the Commission; and I am inclined to let the opinion speak for itself, and to enter the decree in accordance with that opinion as it stands. I feel . . . that the decree might properly recite the finding and conclusion of the opinion that the Commission did not have the authority to make the order from which the appeal was taken."

[21] We fully appreciate that in the final analysis the scope of our powers is determined by the judicial interpretation and construction of the several statutes vesting the powers in us; however, it is necessary, if we are to function as an administrative body, that we venture preliminary answers to certain judicial questions, and more especially such of those questions as relate to the extent of our jurisdiction.

It appears to us that we do have the power to conduct an investigation into the affairs of the Michigan Bell Telephone Company and to make determinations of fact concerning its rates. Such power of investigation is separate and complete in itself. In the early days of regulation it was often the only power granted to so-called regulatory bodies. While it is customary for its exercise to be coupled with that of other powers, it may be used alone.

We have here used this power of investigation and we have considered the reasonableness of the rates of the Michigan Bell Telephone Company, and we find them now to be and to have been unreasonable since the 1st day of January, 1944.

We find that the rates and charges of the Michigan Bell Telephone Company during 1944 were unjust and unreasonable in that they exact from the consumer gross revenues in an amount so high that the company proposes to pay $4,404,000 and upwards, in Federal excess profit taxes (of which taxes at least $3,000,000 are avoidable in fact) over and above the normal income and surtax of $5,084,000; and that it so exacted from the consumers gross revenues in an amount so high that the company proposes to pay to the American Telephone and Telegraph Company the sum of $1,004,000 (of which at least $250,000 was an unnecessary element of expense) over and above dividends on the Michigan Company's stock, etc., and that it so exacted gross revenues in an amount so high that the

company did propose to charge an excess, for 1944, of $250,000 and upwards, as an operating expense and for claimed depreciation of intrastate property.

Accordingly, we find that the rates and charges of the Michigan Bell Telephone Company were unjust as of the following dates:

(1) January 1, 1944, which is the date from which the income taxes to the company for the year 1944 are computed. The avoidability of such tax must relate to a full annual period;

(2) May 18, 1944, which is the date upon which the Michigan Bell Telephone Company was placed upon notice that the reasonableness of its rates and charges was questioned by this Commission;

(3) October 3, 1944, which is the date upon which the show cause order was issued, beginning this investigation into the rates and affairs of the Michigan Bell Telephone Company;

(4) October 17 and October 19, 1944, being the days upon which the taking of testimony in these proceedings began;

(5) December 28, 1944, which is the date of the interim order, which order has been vacated by the circuit court for the county of Ingham, in chancery. (In doing what is hereinafter done, it is not our intention or purpose to vacate nor revoke this interim order); and,

(6) December 13, 1945, which is the date of this order.

[22] It also appears to us that, having found the existing rates and charges of the Michigan Bell Telephone Company to be unjust and unreasonable, we have the power to determine, and by order fix and order substituted therefor such rates and charges as are just and reasonable. We believe that this power exists separate and apart from any power to order refunds or to require a restoration through credit or otherwise of the excess over the reasonable rates to the consumers by which it was paid to the company—perhaps the exercise by us of this power is a condition precedent to a right of suit on behalf of the customers to recover such excess. At any event it is our purpose and desire to exercise this power effectively as of the earliest possible lawful date.

To the accomplishment of this purpose we find that the schedules of rates and charges hereinafter in this order prescribed are just and reasonable;

Accordingly,

It is *ordered* that the Michigan Bell Telephone Company file with this Commission, effective as of January 1, 1944, the schedules of rates hereinafterwards prescribed.

If it be determined that this Commission is without power and authority to prescribe schedules of rates effective as of January 1, 1944; and, if it be determined that this Commission does have the power to prescribe such schedules of rates as of any of the following dates, then in the alternative, and to effectuate its expressed purpose that such rates are to be prescribed as of the earliest possible lawful date;

It is *ordered* that the Michigan Bell Telephone Company file with this Commission the schedules of rates, hereinafterwards prescribed, effective as of May 18, 1944; in the alternative, effective as of October 3, 1944; in the alternative, effective as of October 17,

1944; and, in the alternative, effective as of December 28, 1944.

We concluded in our interim order of December 28, 1944, that we possess the power to prevent unnecessary elements of expense being charged against the consuming public and to make whatever adjustments are necessary to effectuate that result. When the unnecessary element of expense is income taxes, avoidable in whole or in part, the amount of such tax cannot actually be known until at or near the close of the year. In these proceedings we have found that yearly, and for the years 1944 and 1945, the sum of at least $3,000,000 in excess profit taxes are avoidable in fact. After avoiding this tax liability of $6,000,000, a reasonable return would remain to the company.

Now, therefore it is *ordered,* that Michigan Bell Telephone Company reduce its intrastate revenues $3,500,000 for the calendar year 1944 by refunding said amount to its subscribers, said revenues being designated upon its books as:

Account 500—Subscribers' Station Revenues
Account 500-01—Monthly and Miscellaneous Charges
Account 500-02—Message Charges.

The company is directed to submit a plan for the distribution of said amount within fifteen days of the effective date of this order, or in the alternative, the Commission will, by supplementary order, provide for the distribution of said sum.

It is *further ordered* that Michigan Bell Telephone Company reduce its intrastate revenues $3,500,000 for the calendar year 1945 by refunding said amount to its subscribers, said revenues being designated upon its books as:

Account 500—Subscribers' Station Revenues
Account 500-01—Monthly and Miscellaneous Charges
Account 500-02—Message Charges

The company is directed to submit a plan for the distribution of said amount within fifteen days of the effective date of this Order, or in the alternative, the Commission will, by supplementary order, provide for the distribution of said sum.

It is *further ordered,* conditioned that no existing rate, rental, or charge be thereby increased, that Michigan Bell Telephone Company file and make effective as of its various billing dates, for services to be rendered subsequent to December 31, 1945, rates, rentals, and charges in accordance with the following schedules:

Detroit Zone

1-party business, 100 messages, additional messages—100 @ 3¢, over 100 @ 4¢, monthly rate—$5.00.

Private branch exchange, trunks, 100 messages, additional messages—100 @ 3¢, over 100 @ 4¢, monthly rate—$6.00.

1-party residence, flat rate, monthly rate—$4.50.

1-party residence, 100 messages, additional messages—100 @ 3¢, over 100 @ 4¢, monthly rate—$3.75.

2-party residence, flat rate, monthly rate—$4.00.

2-party residence, 100 messages, additional messages, 100 @ 3¢, over 100 @ 4¢, monthly rate—$3.00.

2-party residence, 70 messages, additional messages—100 @ 3¢, over 100 @ 4¢, monthly rate—$2.40.

2-party residence, 45 messages, additional messages—100 @ 3¢, over 100 @ 4¢, monthly rate—$2.40. (Available only outside base rate area.)

2-party residence, 40 messages, additional messages, 100 @ 3¢, over 100 @ 4¢, monthly rate—$2.25.

Semipublic pay station, daily guaranty 25¢. Refund 1¢ per message over 150 messages. (Interzone messages included.)

(All other rentals and charges to remain unchanged.)

Maximum Rates Outside Detroit Zone

Group	Stations	Residence Service Flat Rates Ind.Line	2-party	4-party
1	100 or Less	$1.75	$...	$1.45
2	101 to 400	1.90	1.65	1.45
3	401 to 800	2.00	1.75	1.50
4	801 to 1,600	2.00	1.75	1.50
5	1,601 to 3,000	2.00	1.75	1.50
6	3,001 to 6,000	2.50	2.00	1.75
7	6,001 to 10,000	2.50	2.00	1.75
8	10,001 to 30,000	3.00	2.25	2.00
9	30,001 to 45,000	3.00	2.25	2.00
10	45,001 to 60,000	3.00	2.25	2.00
11	60,001 Up	3.00	2.25	2.00

(All other rentals and charges to remain unchanged.)

The Commission retains jurisdiction to do any and all things necessary to effectuate and enforce this order.

COLORADO PUBLIC UTILITIES COMMISSION

Frank R. LaBate et al.

v.

North Federal Water System

Application No. 7000, Decision No. 25323
December 29, 1945

APPLICATION *for order requiring utility to furnish water to persons residing within area covered by certificate; order granted.*

Service, § 117 — Duty to serve.

1. A public utility has a duty to serve all those within its territory who desire service and are willing to comply with its rules and regulations, p. 100.

Service, § 144 — Area covered by certificate — Lack of equipment — Refusal to serve.

2. Lack of the facilities necessary to serve certain applicants residing in the area covered by a certificate may not be urged as a ground for refusal of a water utility to serve, since such a contention is diametrically opposed to the obligations of the utility under its certificate of public convenience and necessity, p. 100.

Service, § 128 — Refusal to serve property — Notice to purchaser.

3. Notice to persons about to purchase lots from a party who had repudiated a contract with utility owners, that water service would not be rendered to such lots, does not absolve the utility from its duty to serve all persons residing in the area covered by its certificate, p. 100.

Service, § 128 — Failure to file rates — Grounds for refusal to serve.

4. A public utility may not urge its own failure to have on file its tariffs or schedules of rates, charges, rules, and regulations, as required by statute, in order to escape its duty to serve the public, p. 101.

Discrimination, § 199 — Refusal to serve portion of territory.

5. The refusal of a water utility to furnish service to persons residing in a portion of the area covered by its certificate while serving persons in other portions constitutes discrimination and is in violation of law, p. 102.

Service, § 147 — Rate proceedings — Refusal to serve.

6. A contention that rates are inadequate, which contention is involved in a pending proceeding to fix proper rates and charges, is not a proper ground for refusal to give service, p. 102.

Service, § 489 — Evidence — Contractual difficulties between owners of utilities.

7. Contractual difficulties between the owners of a public utility, and court proceedings involving the same, are collateral to the question of the utility's duty to serve, and evidence relative thereto is properly excluded in a proceeding to compel service, p. 103.

APPEARANCES: Whitehead and Vogl, Denver, Attorneys, for applicants; Lee, Shaw and McCreery, Attorneys, for respondent.

By the COMMISSION: In this proceeding, proposed customers of a water utility, who reside or own property in the area covered by the utility's certificate, seek an order requiring the utility to furnish water service to them.

In their application, the original applicants allege that each had purchased and is in possession of lots in block 2, Hillsborough subdivision, Adams county, Colorado; that heretofore, in Application No. 6562, this Commission issued a certificate of public convenience and necessity to the Trentman-Milner Company, respondent, for the establishment of a domestic water system in the territory described therein, which included said block 2, said system being known as "North Federal Water System"; that a water main had been installed and now remains in the alley in said block 2; that some of the applicants have erected, or are now erecting, residences on the lots purchased by them in said block 2, and that others desire to commence the erection of residences on said lots; that all of the applicants desire to connect their respective properties with the said water main and establish connection to said water system, and to have water furnished to them by respondent through said connection; that applications had theretofore been made to A. Milner, the manager of said respondent, for leave to make such connections and to be furnished water; but that said Milner refused to permit such connec-

tions to be made or to furnish water to applicants; and that said Milner had stated that no connections will be permitted with said main in block 2 and that no water will be furnished by respondent to any owners of lots therein.

At the hearing, William L. Snead, John Henson, and Lloyd Ace, who alleged that they had purchased and were in possession of lots in said block 2 and have residences under construction on said lots and were in need of water therefor, asked to be joined as applicants herein. Over the objection of the respondent, said parties were permitted to become applicants herein and their names have been added in the caption.

The respondent filed its answer, wherein, in its first defense, it admitted that a certificate of public convenience and necessity had been issued to it, as alleged in the application, but alleged that the water main in said block 2 has been a dead line since the time of its installation in accordance with the requirements and order of the War Production Board. The respondent admitted that the applicant, Harry L. Kirkhart, on or about April 3, 1944, advised A. Milner, as managing agent for said water system, that he was contemplating purchasing lots in said block 2 from John P. Heiser, and inquired if domestic water would be available, and then alleged that said Kirkhart was advised that no additional water service would be rendered in said block 2 to any purchaser from said Heiser of lots therein, nor would any such purchaser be permitted to make connection with said dead line.

The respondent also set out two affirmative defenses. For a second defense, respondent alleged that, on March 29, 1944, in Application No. 6562, this Commission granted a certificate of public convenience and necessity to respondent for the purpose of operating a system to be known as "North Federal Water System," for the purpose of distributing and supplying water for domestic purposes only to the residents of North Federal Hills subdivision, North Lawn Gardens subdivision, blocks 1 and 2 Hillsborough subdivision, and Lowell Heights subdivision; that respondent filed a schedule of rates, rules, and regulations covering the operation of said system, pursuant to the order of the Commission, which were to become effective upon thirty days' notice to the Commission and to the public; that the effective date of said tariffs has been suspended by order of the Commission; that, at the time of the issuance of said certificate and at the time of filing said answer, the rate schedules then in effect were inadequate to justify the operation of said system, and that, at the present time, and at no time since the issuance of said certificate, has there been any schedule of rates which respondent is authorized by law to charge for the rendition of such service in blocks 1 and 2 of Hillsborough subdivision.

For a third defense, respondent alleged that, on December 21, 1942, said A. Milner entered into a contract with John P. Heiser, the then owner of said Hillsborough subdivision, whereby Milner was given the exclusive right to develop and sell all lots therein; that said Milner agreed to advance all expenses in connection with the preparation and sale of lots therein,

including the installation of water mains to supply and serve domestic water to the expected residents thereof; that, in reliance upon said contract, said Milner installed water mains in blocks 1 and 2 of said subdivision and caused the respondent to make application for a certificate of public convenience and necessity to supply domestic water (inter alia) to said blocks 1 and 2; and that said certificate was issued to respondent on March 29, 1944.

The respondent then alleged, in said third defense, that the obligation to render water service to said blocks 1 and 2 was undertaken only and solely as a part of and in connection with the development and sale of lots in said subdivision, pursuant to said contract of December 21, 1942.

The respondent then alleged that, in March, 1944, said Heiser repudiated said contract and his obligations thereunder by an attempted cancellation thereof; that, later, said Heiser commenced an action in the district court of the city and county of Denver for a judicial declaration of said cancellation; that said Milner answered therein, alleging wrongful termination of said contract, estoppel, and laches, and also filed a counterclaim, wherein he prayed that the contract be declared in full force and effect or, in the alternative, for damages; that findings were entered by the court in said action on April 2, 1945, sustaining the allegations of said Milner that the said contract had not been abandoned by him and that the attempted cancellation thereof by Heiser was ineffectual and wrongful, dismissing the complaint therein, and awarding damages to said Milner; that said action is now pending in the supreme court of the state of Colorado on writ of error sued out by said Milner; that, on June 16, 1945, Milner filed a lis pendens for record in Adams county, notifying all persons of the pendency of the writ of error.

Respondent, in said third defense, then alleged that, long prior to the purchase of lots by any of the applicants, the said Heiser knew that he should cease and desist from making sales of lots in said blocks 1 and 2, Hillsborough, and from making representations that water would be available for domestic use therein; that said Heiser had been informed by said Milner that the water main in block 2 was a dead line and the use thereof would not be considered until the litigation between them was finally disposed of; that, notwithstanding said information, Heiser and his salesman, A. Ruthven, have been representing to prospective purchasers that domestic water would be immediately available.

Respondent, in said defense, further alleged that each of the applicants now has, and prior to the making of his contract of purchase of lots in said block had, knowledge and notice from said public records of, and is bound by and subject to, the rights and title of said Milner in and to said lots described in the contract of December 21, 1942; that Heiser now repudiates said contract.

Respondent, in said defense, further alleged that it should not be required to permit connection by, or required to render water service to, any of the applicants or any other person or persons not presently connected with or served by said system in blocks 1 and 2, Hillsborough, pending the de-

termination of the proceedings in the supreme court.

This matter was heard by the Commission on October 23, 1945. Briefs were submitted by the parties and have been considered by the Commission.

The applicant, Harry L. Kirkhart, testified that he purchased Lot 11, block 2, Hillsborough, and has erected a house thereon, where he is now living; that he does not have any water connection on that property; that he asked Milner for water and that Milner said that block 2 did not have any water as those lines were dead; that he commenced the erection of his house in April, 1945.

On cross-examination, Mr. Kirkhart testified that he contracted to purchase lot 11 in March or April, 1945; that he had his basement dug when he went to see Milner; that Milner told him that the line in block 2 was dead; that he has drilled wells; that he told Milner that he would have to drill a well if he could not get water.

Over the objection of applicants' attorney, Mr. Kirkhart testified that, at the time he entered into the contract for the purchase of his lot, Mr. Ruthven told him that there was water available for domestic use only; that Ruthven did not tell him there was a controversy between Milner and Heiser; Ruthven did not tell Kirkhart who owned the water system; that he ascertained from the neighbors that Milner was the party to see about getting a water tap; that he is making payments on his contract to purchase this lot for $508; he told Mr. Ruthven about Milner's refusal to furnish water and Ruthven told him to file a complaint with the Commission; that, if they would not give him water, the Commission would see that he got the water; that he knew from the beginning that there was a question about the water; that he put a well down 44 feet and has obtained no water.

Timothy Cisneros testified that he purchased lot 12 and half of lot 13 in block 2 in the spring of 1945, paying $1,387.50 in cash; that he did not personally make application to Mr. Milner for water but that his wife did; that, when he purchased the lot, Mr. Ruthven told him that water would be there pretty soon; that, in July, 1945, he found out that Mr. Kirkhart was building a home and did not get any water; that he knew there was no water; that he filed a suit to get his money back but that now he does not want his money back but wants the lots; that he has plans to build a home and a store on those lots; that his attorney told him that Milner was claiming an interest in this property.

Mrs. Lupe Cisneros testified that, after they bought property in block 2, she talked to Mr. Milner about water, and he stated that, as far as he knew, he had nothing to do with them, and that they should go to Mr. Heiser, the one that sold this property. She told Milner that they wanted to build a home and were waiting for water. They purchased their property from Mr. Ruthven and bought it with the understanding that there was water there, or that the pipes were connected there. They found out about the controversy relative to water when they were ready to build. Mr. Madden filed a suit for them in July, 1945, which was dismissed September 14, 1945, at the cost of the plaintiff (Cis-

neros). They were furnished with an abstract of title. Mr. Madden examined the title for them. Mr. Madden told them that Mr. Milner claimed an interest in the property, and that there was not going to be enough water for anything but domestic use. Mr. Madden told her about a controversy that had gone to the supreme court.

Timothy Cisneros then testified that the lawyer told them there was no water at all and that, in case there would be water, there would be water just for domestic use—no water for irrigation—and told them there was some litigation about the water; that Mr. Ruthven told them they would not have to worry about water, as water would be there sooner or later; that Mr. Ruthven did not tell them, at the time they purchased their property, that Mr. Milner was claiming an interest in the property or about the suit pending in the supreme court; that Mr. Ruthven told them the water pipe ran through his lot.

William C. Lane and John H. Henson also testified that they had purchased lots in block 2, Hillsborough, and that there were no water connections for those lots.

Albert L. Ruthven testified that William L. Snead had purchased lots in this block and that he has built a 2-room house thereon and is adding additional rooms to it, and that he is paying $200 for the lots. He also testified that Mr. Lloyd Ace was purchasing lots in said block. He negotiated the sale of these lots. He told the purchasers that there was some litigation going on in regard to the water. He told Mr. Ace that the only way he could get water was through an order of the Commission; that he told Mr. Snead that there were water mains on the property and that a certificate of necessity and convenience had been issued for the purpose of supplying water, and that the whole thing was in controversy. The water main, the whole diagonal length of block 2, is not connected into the line, and the valve is shut off. (It was conceded that the valves were there but the attorney for respondent contended that the line is severed.)

John Peter Heiser testified that he is the record owner of Hillsborough addition and that all lots in block 2, with the exception of lot 8, are deeded or under contract. He gave the witness Cisneros a warranty deed to his lots.

A. Milner testified that he is one of the partners of the firm of Trentman and Milner; that the other partners are John L. Trentman and H. C. Trentman. He identified Exhibit No. 7 as being a map whereon are shown the water mains owned by Trentman-Milner Company in North Federal Hills and North Lawn Gardens outlined in red. The mains or lines in Lowell Heights, outlined in blue, are owned by him. The line in blue, cutting across from Lowell Heights through blocks 1 and 2 in Hillsborough and across Federal boulevard, was constructed by him to connect the Lowell Heights well with the North Lawn well. The main in block 2, shown by the green line, was laid by him and is owned by him. The lines in Lowell Heights were bought by him and held by him for the purpose of augmenting the supply of water in connection with the contract for the sale of lots which he had for Hillsborough. The lines in yellow, blue, and

green have not been deeded to Trentman-Milner. The water main in block 2, Hillsborough, does not show any connection to the line leading from Lowell Heights across Federal boulevard to a connection with the mains east of Federal boulevard. The well in Lowell Heights is his own personal well and the well in North Lawn Gardens is the property of Trentman-Milner. A certificate of public convenience and necessity was issued by this Commission in March, 1944, in Application 6562; that, in connection therewith, he filed rates for all parts of the area covered by the certificate; that those rates are still under suspension.

Mr. Milner then testified that he entered into a contract with John P. Heiser respecting Hillsborough, dated December 21, 1942. He was then asked as to an agreement or understanding between him and Heiser in connection with that contract respecting the installation of water mains in blocks 1 and 2 and 3 and 4 of Hillsborough. Objection thereto made by applicants was sustained by the Commission. In connection therewith, respondent offered to prove: That the contract of December 21, 1942, was for the sale of lots in Hillsborough, and, as a basis for the sales, it was agreed that the development of the tract for sale required water installations. In reliance upon said contract, Mr. Milner installed water mains in blocks 1 and 2 of said subdivision and caused the respondent to make application for a certificate of public convenience and necessity to supply domestic water to blocks 1 and 2. The installation of the mains in Hillsborough was done at the personal expense of Milner and the title thereto has not been transferred to the respondent nor has respondent reimbursed Mr. Milner therefor, for the reason that the application to render water service was undertaken as a part of and in connection with the development and sale of lots. Thereafter, Heiser undertook to repudiate and terminate said contract. The purpose of this testimony was to show under what circumstances Mr. Milner, on behalf of Trentman-Milner, asked for a certificate of public convenience and necessity; that the conditions which brought about the application have been repudiated; that the certificate should be modified or held in abeyance until a determination by the supreme court; that the respondent should not be required to furnish service because he (Milner) owns the pipe and the well; and that Milner is objecting to proceeding with this matter because he was imposed upon in getting Trentman-Milner to get the certificate of public convenience and necessity.

The respondent also asked that the record in this case be held open long enough to introduce the rates and the determination of the Commission in the rate proceedings now pending before it. This request was taken under advisement by the Commission.

It was also brought out at the hearing that the application for a certificate of public convenience and necessity was filed by the respondent on January 25, 1944, and that the notice given by Mr. Heiser for a termination of the contract of December 21, 1942, was given to Mr. Milner on March 8, 1944, and that the certificate, which was accepted by respondent, was is-

sued by this Commission on March 29, 1944.

The certificate of public convenience and necessity issued to the respondent for the operation of the North Federal Water System was made a part of the record. That certificate is Decision No. 22124, dated March 29, 1944. From that decision, it appears that the respondent filed its application on January 25, 1944, for such certificate, for the supplying of domestic water to North Federal Hills subdivision, North Lawn Gardens subdivision, North Lowell Heights subdivision, and Hillsborough subdivision, all in Adams county. It also appears that the respondent is a copartnership, composed of A. Milner, John L. Trentman, and Harry C. Trentman. It appears from said decision that the respondent and its predecessors have been engaged in supplying water to lots in North Federal Hills subdivision for a number of years. Prior to the fall of 1943, a former owner of the North Lowell Heights Water Company (Mr. Goyn) had been operating a water system for the purpose of supplying water for domestic purposes to the residents of North Lowell Heights subdivision. No certificate of public convenience and necessity was issued to Mr. Goyn, the former owner. However, he did file tariffs and schedules of rates and rules and regulations. In 1943, Aubrey Milner, one of the partners of respondent, purchased said system and, subsequently, has operated said system under the tariffs theretofore filed by his predecessor. No application for authority to transfer said system to Mr. Milner was made to this Commission. Mr. Milner consolidated said system with the system through which the residents of North Federal Hills and North Lawn Gardens had been served, and, in said proceeding, the applicant sought approval of the transfer of the North Lowell Heights system. It further appears from said decision that, after the purchase of the North Lowell Heights water system, a main was laid across Hillsborough subdivision to connect that system with the system in North Federal Hills and North Lawn Gardens, and that the respondent proposed to serve the residents of Hillsborough subdivision from said system.

It further appears from said decision that the applicant was then serving approximately one hundred customers, and that the system is capable of serving approximately a hundred more customers, and that the present source of supply of respondent was sufficient to serve adequately the territory sought to be covered by the certificate. The Commission found that the public convenience and necessity required the service of applicant in the territory described in the application and the approval of the transfer of North Lowell Heights water system to the respondent. Accordingly, the Commission approved the transfer of said North Lowell Heights water system to Aubrey Milner and ordered that said system should be included in the North Federal Water System. The Commission issued a certificate of public convenience and necessity covering the territory described therein, which includes blocks 1 and 2, Hillsborough subdivision.

Decision No. 24923, dated September 7, 1945, in Case 4930, was made a part of the record. As appears from that decision, that proceeding

was commenced by the Commission on its own motion to determine whether or not the Commission should enter an order requiring the respondent to drill an additional well or wells, or enlarge its plant and facilities so as to furnish an adequate supply of water to respondent's customers, and, at the hearing, the complaint of the Commission was amended to include not only present customers but "proposed customers desiring service." The Commission found therein that the service now being rendered by respondent was inadequate and insufficient to adequately fulfil the public convenience and necessity of those whom respondent is required to serve under its certificate. The respondent was required, forthwith, to seek the cause or causes of any inadequacy of service and remedy the same within a reasonable time. The jurisdiction of that proceeding was retained, and the respondent was ordered to show cause to the Commission that the present inadequacy and insufficiency of service to customers and proposed customers had been remedied and that adequate service and a sufficient supply of water are being furnished to said customers and can be furnished to proposed customers desiring service.

No evidence was introduced at the present hearing as to any alleged inability of the respondent to serve the present customers in the territory covered by the certificate, or inability to serve those proposed customers within said territory desiring service. As will be hereafter demonstrated, the respondent has endeavored to justify its refusal to serve the applicants named herein, or other customers who might desire service, solely upon the affirmative grounds mentioned in its defenses.

[1] The respondent is a public utility within the meaning of § 3, Chap 137, 1935 Colo Stat Anno. It sought a certificate of public convenience and necessity, under the provisions of the Public Utilities Act (Chap 137, 1935 Colo Stat Anno), which would authorize it to furnish water service to the public generally within the territory described in its certificate. As shown by the decision granting said certificate, the mains were then constructed in the territory covered thereby. The duty of a public utility is to serve all those within its territory who may desire the service of the utility, and who will comply with the rules and regulations of the utility and will pay the charges therefor.

The applicants are all residents of, or owners of, lots in the territory covered by the certificate. All the applicants have purchased lots in block 2 and are potential customers of the respondent. A great many of the applicants have made specific demand upon the respondent for service. The demands of those who made application for service were refused. While it does not appear that the others have made such demands, they are in a position to receive such service and are desirous of obtaining water through the facilities of respondent. It appears that, even if demand had been made, service would have been refused by respondent. Therefore, unless the respondent is excused from furnishing service by reason of the matters set forth in its defenses, the applicants are entitled to the relief prayed for.

[2, 3] The defenses of the respondent are summarized by its counsel as

follows: First, that the water main in block 2 is a dead line, and that one of the applicants, at least, had been advised that domestic water service would not be rendered to purchasers who purchased lots in block 2 from Heiser. The second defense is based upon the fact that the schedules of rates filed by respondent have been suspended by this Commission and that the present rates are inadequate. The third defense is that Milner, by contract, was given an exclusive right to sell lots in blocks 1, 2, 3, and 4, Hillsborough, by the owner, Heiser; that Milner, pursuant to said agreement, had installed water mains in blocks 1 and 2 and had caused Trentman-Milner Company to make application for the certificate of public convenience and necessity authorizing water service to said blocks 1 and 2; that said obligation to render water service in said blocks 1 and 2 was undertaken only and solely as a part of and in connection with the development and sale of lots therein; and that said Heiser had wrongfully repudiated said contract and that a civil action between Milner and Heiser upon the contract is now pending in the supreme court and undisposed of.

The first defense can be disposed of by stating that such defense is diametrically opposed to the obligations of the respondent under its certificate of public convenience and necessity. The respondent, in Application 6562, sought authority to render, as a public utility, water service to the inhabitants of blocks 1 and 2, Hillsborough. Upon the granting of said certificate pursuant to said application, the respondent became obligated to furnish water for domestic purposes to all the inhabitants of, and owners of property in, the territory covered by its certificate, including those in said blocks 1 and 2, who desire the service it renders. That duty extends to all members of the public to whom its use and scope of operation extend who apply for such service and comply with the reasonable rules and regulations of the utility. Seaton Mountain Electric Light, Heat & P. Co. v. Idaho Springs Inv. Co. (1910) 49 Colo 122, 127, 111 Pac 834, 33 LRA(NS) 1078. A public utility cannot pick and choose its customers. North Carolina Pub. Service Co. v. Southern Power Co. PUR1923A 289, 282 Fed 837, 33 ALR 626, 632,—certiorari dismissed (1924) 263 US 508, 68 L ed 413, 44 S Ct 164. It cannot pick and choose the portions of the territory in which it will render service. People ex rel. New York & Q. Gas Co. v. McCall, 245 US 345, 351, 62 L ed 337, PUR1918A 792, 38 S Ct 122. A mere voluntary statement by the manager and one of the partners of respondent that no service would be furnished to purchasers of lots in said block who did not purchase such lots from Milner cannot absolve the respondent from its duties as a public utility under the law. The mere statement of respondent's position stamps it as unreasonable and unjust. Seaton Mountain Electric Light, Heat & P. Co. v. Idaho Springs Inv. Co. *supra*.

[4] As to the second defense, a public utility is required, by the Public Utilities Act (§ 16, Chap 137, 1935 Colo Stat Anno), to file its tariffs or schedules of rates and charges, rules and regulations, with this Commission. After the filing of such tariffs or schedules, the rates contained

therein become the lawful rates which the utility can collect unless such tariffs or schedules are suspended by the Commission under authority of § 48, Chap 137, 1935 Colo Stat Anno. Under § 16, the rates and charges contained in respondent's proposed tariffs should not have exceeded the rates and charges of respondent which were in effect at the time the application for a certificate was filed. It appears from the evidence that the respondent had been furnishing water service to inhabitants in the territory involved, and making a charge therefor, for a long period of time prior to the filing of the application without having on file any tariffs or schedules other than those which were filed by a previous owner of the North Lowell Heights Water System. Because of the suspension of the proposed tariffs and schedules filed by the respondent, and the pendency of proceedings to determine the reasonableness and lawfulness of the rates and rules and regulations contained therein, the Commission has not objected to the respondent's collecting rates which it was collecting prior to the filing of the application for a certificate. If the tariffs or schedules filed by a public utility are suspended by the Commission because of complaint having been made thereto by customers, or on the Commission's own motion, generally the tariffs and schedules theretofore in effect continue until the reasonableness and lawfulness of the suspended tariffs or schedules have been considered and determined. Where a utility does not have tariffs or schedules on file with the Commission at the time of the suspension, or proposed tariffs or schedules, then, under the law, it would be the duty of the utility, in the event of suspension by the Commission, to file tariffs or schedules containing rates and charges which would be acceptable to the Commission until the questions relative to such suspended schedules could be determined. In any event, the respondent is not in position to base a defense to this proceeding upon his own violation of the law in not filing tariffs in compliance with § 16. A public utility will not be heard to urge its own transgressions in order to escape its duty to serve the public. State ex rel. Danciger & Co. v. Public Service Commission, 275 Mo 483, PUR 1919A 353, 205 SW 36, 18 ALR 754. The failure to file tariffs might preclude utility from collecting for water delivered, but would not relieve the utility from obligation to serve.

[5] The allegations of this defense indicate that respondent is furnishing water service in the other portions of the territory covered by its certificate without having any tariffs on file, but it has not raised any question as to its duty to serve in those other portions because of the absence of effective tariffs. To permit respondent to refuse service in blocks 1 and 2 on account of there being no effective tariffs on file, and to serve in those other portions, would constitute a preference and advantage in favor of residents in other portions of its territory and a prejudice and disadvantage against those in said blocks 1 and 2, contrary to § 19, Chap 137, 1935 Colo Stat Anno.

[6] The respondent, in the second defense, also alleged that the rates in effect at the time of the issuance of said certificate were and are wholly

inadequate to justify the operation of said system. No evidence on this claim was introduced or offered by respondent and, in effect, this claim was abandoned by respondent. Even if that defense were not abandoned, such defense cannot be maintained in a proceeding such as this and evidence relative thereto would be immaterial and incompetent. The Commission has the power to prescribe just and reasonable rates to be charged by a public utility. (Sections 14, 15, 32, and 48, Chap 137, 1935 Colo Stat Anno.) It appears that such a proceeding, to determine just and reasonable rates to be charged by respondent, is now pending before the Commission. A public utility is prohibited by law from discriminating between its customers or subjecting any person to any prejudice or disadvantage. (Section 19, Chap 137, 1935 Colo Stat Anno.)

[7] Briefly, the third defense is that the respondent cannot be compelled to furnish water service to customers and proposed customers in blocks 1 and 2, Hillsborough, because of the facts that John P. Heiser had breached a contract entered into between Heiser and A. Milner, one of the partners composing the respondent, whereby Milner was given the exclusive right to sell the lots in said blocks 1 and 2; and that the mains in said blocks now are the property of said Milner and not of the respondent, and were constructed by said Milner in reliance upon said contract. That contract is collateral to any part of this proceeding. The respondent is not a party to that contract. It does not, in any way, relate to or affect the public utility obligations of respondent.

The facts, as shown by respondent's pleadings and offer of proof, are closely analogous to those in the case of Haugen v. Albina Light & Water Co. (1891) 21 Or 411, 28 Pac 244, 14 LRA 424. That was an action in mandamus to compel a utility to furnish water to customers within the area authorized to be served by it. The utility defended upon the ground that parties by the name of Hughes and Prescott were the owners of the subdivision in which service was demanded; that an agreement had been entered into between said owners and the utility for the purpose of supplying water to said subdivision; that, although the pipe was laid by the utility, it was paid for by Hughes and Prescott and was under their absolute control; that the utility had no right to tap the same except with the consent of the owners and upon payment of the cost of laying same. A demurrer to that defense was sustained and the writ was made peremptory. The decision of the lower court was affirmed. The city had granted the utility the right to lay water mains in the streets for the purpose of carrying out the purposes for which the utility was incorporated. The utility was incorporated for the purpose of supplying water to the city and its inhabitants. It could not operate in the city without a franchise. By accepting that franchise, it assumed the duty of supplying the public with the commodity which it was organized to supply to all persons without discrimination. The court cited an excerpt from the decision of Shaw, CJ., in Lumbard v. Stearns (1849) 4 Cush (58 Mass) 60, 61, to the effect that a utility cannot furnish water to some houses and lots and refuse to supply

others, thus giving a value to some and not to others, and that such a procedure would be a *plain abuse* of its franchise. The court decided that, while it was true that the main was laid in front of the plaintiff's property for the exclusive benefit of Hughes and Prescott to induce purchasers to buy land from them for homes instead of from others, still, the utility must serve all alike. Consequently, the contract between the utility and Hughes and Prescott was held not to relieve the utility from its obligations to supply water, on reasonable terms, to all persons living along such street who may apply for it. Applying the principles of that case to the instant case, the duty which respondent owes to the public cannot be absolved by reference to a contract entered into by one of the partners composing respondent and a third person or by the fact that respondent does not own the mains. The facts that the main is owned by another and was laid in block 2 pursuant to the contract between Milner and Heiser, and that Heiser had breached his contract, are in no way relevant or material to the question of whether or not respondent shall be required to fulfil its duties as a public utility.

Our supreme court, in Seaton Mountain Electric Light, Heat & P. Co. v. Idaho Springs Inv. Co. *supra*, held that a utility cannot refuse to render service which it is authorized to furnish because of some collateral matter not related to that service. In that case, the Seaton Company had obtained a franchise to furnish electric current and steam or water heat in the town of Idaho Springs. It sought to impose a condition that it would not furnish steam heat unless the customer also purchased electricity from it.

In Ten Broek v. Miller, 240 Mich 667, PUR1928B 369, 216 NW 385, 55 ALR 768, the proprietor of a summer resort, who also was a water utility, refused to furnish water to a customer unless he complied with a rule requiring lot owners to provide septic tanks for the disposal of sewage. The court held that the installing of a septic tank was purely a collateral matter and had no relation to the duty of the utility to furnish water.

The fact that said contract is the subject of court proceedings to determine the rights of both Heiser and Milner thereunder does not, in any way, affect or alter the duties of the respondent, who is not a party to said court proceedings, to serve the public in the area covered by its certificate.

The evidence shows that respondent is now serving customers in block 1. Apparently, those customers purchased their lots from Milner. The allegation that respondent would not serve those who purchased lots in block 2 from Heiser indicates strongly that it will serve any purchaser in block 2 if the purchase was made from Milner. This constitutes a discrimination which is prohibited by law. (Section 19, Chap 137, 1935 Colo Stat Anno.)

The respondent attempted to show that the applicants had not employed Carle Whitehead to bring and prosecute this proceeding for them, and that the applicants had not paid said Whitehead. Respondent attempted to show that Whitehead was being paid by John P. Heiser, and that said Heiser and his salesman, Mr. Ruth-

en, suggested to applicants that they le an application with the Commis- ion. It does not seem important hether Mr. Whitehead was employed r paid by the applicants or by Mr. leiser, or why applicants sought re- ef from the Commission. The ap- lication was prepared by Mr. White- ead, but it was signed by the ap- licants named in the caption and the ree other applicants, Snead, Henson, d Ace were permitted to become ap- licants. Many of the applicants tes- fied at the hearing. If the applicants e entitled to relief, it is immaterial ho employed Mr. Whitehead or who paying him, or who or what induced pplicants to come to this Commission r relief.

The Commission finds: The Com- ission has jurisdiction of this pro- eding and has jurisdiction to grant e relief prayed for by the applicants.

The respondent, a partnership, do- g business as "North Federal Water ystem," is a public utility and is the wner and holder of a certificate of blic convenience and necessity au- orizing it to operate a system for istributing and supplying water for mestic purposes in that territory in dams county, Colorado, known as orth Federal Hills subdivision, orth Lawn Gardens subdivision, orth Lowell Heights subdivision, d blocks 1 and 2 in Hillsborough bdivision. The respondent is ob- gated, under said certificate, to fur- ish water for domestic purposes to l the inhabitants of and owners of roperty in the territory covered by certificate, including those in ocks 1 and 2 Hillsborough subdivi- on, who desire the service respondent nders and who comply with the reasonable rules and regulations of the respondent.

Each of the applicants has purchased and is in possession of lots in block 2 of said Hillsborough subdivision, and some of said applicants have erected or are now erecting residences on said lots. Some of said applicants have made applications to the respondent for leave to make connections with the respondent's water mains and to be furnished water there through by the respondent. The respondent has refused to permit such connections to be made or to furnish water to said applicants. The respondent has specifically stated that it will not permit such connections and will not furnish water to the purchasers of lots in blocks 1 and 2, Hillsborough, who purchased their lots from John P. Heiser or A. L. Ruthven.

A main has been constructed in said blocks 1 and 2, and such construction was for the purpose of supplying water to the various lots in said blocks. The mains in said blocks 1 and 2 were constructed and are owned by A. Milner, one of the partners of the respondent. At the time of the filing of Application No. 6562 by respondent, that situation existed, but the respondent, notwithstanding, sought for and was granted a certificate of public convenience and necessity, authorizing the supplying of water to the owners of lots in said blocks 1 and 2, Hillsborough.

Based upon the findings in Decision No. 22124, the respondent is now serving approximately one hundred customers, and the system is capable of serving approximately one hundred more customers. As found in Decision No. 24923, the service now being

rendered by respondent is inadequate and insufficient to adequately fulfil the public convenience and necessity of those whom respondent is required to serve, and respondent is required to seek the cause or causes of any such inadequacy of service and to remedy the same within a reasonable time. The respondent, in this proceeding, did not attempt to show that there was any inadequate supply of water, and for that reason could not serve the applicants. The respondent did not attempt to defend this action upon that ground and, consequently, the only findings that can be made herein are that the supply of water is adequate, or that, if inadequate, it is the respondent's duty to remedy the inadequacy.

The position of the respondent that no service would be furnished to purchasers of lots in blocks 1 and 2 who did not purchase such lots from Milner, respondent's manager, cannot be sustained and cannot absolve the respondent from the performance of its duties as a public utility under the law.

The respondent, prior to the filing of Application No. 6562 for a certificate of public convenience and necessity to operate a water system in the territory described in its application and in the decision granting the certificate, furnished water to customers in said territory without having on file with this Commission any tariffs or schedules of rates, charges, rules, and regulations, as required by law. Subsequent to the granting of said certificate of public convenience and necessity, the respondent filed tariffs or schedules, rates, charges, rules, and regulations to govern its operations in said territory. Those tariffs were suspended by the Commission and are suspended at the present time. It is the duty of a public utility to have on file at all times its tariffs or schedules of rates, charges, rules, and regulations, but, in the event such tariffs or schedules are not on file, the utility cannot urge that fact in order to escape its duty to serve the public. In this connection, respondent is furnishing water service to customers in the portions of its territory other than block 2, Hillsborough, notwithstanding the fact that its proposed tariffs or schedules of rates, charges, rules, and regulations have been and are now suspended. The refusal of the respondent to furnish service to block 2, Hillsborough, constitutes a discrimination and is in violation of law.

The allegations of the third defense interposed by respondent are insufficient, and do not constitute a defense to a proceeding to require the respondent to perform its duties as a public utility. The contract between John P. Heiser and A. Milner, and the court proceedings involving the same, are collateral to the questions here under consideration. Therefore, evidence relative thereto was properly excluded, and the objection to respondent's offer of proof was properly sustained.

In view of the fact that, in this proceeding, the only question is whether or not the respondent is required to permit connections to be made with the water mains in blocks 1 and 2, Hillsborough, and thereafter to furnish water to the customers therein, and that the question of the reasonableness of respondent's rates is involved in the rate proceeding, this proceeding should not be held open until the final determination of the rate proceeding, for the reason that, if the re-

spondent is not required to furnish water service in blocks 1 and 2, Hillsborough, such schedules and rates are not material, and, on the other hand, if the respondent is required to furnish such service, it will have to furnish such service at the lawful rates as determined by the Commission.

Whether or not Mr. Carle Whitehead was employed by the applicants or has been paid by them is immaterial in this proceeding. He prepared the application and the applicants signed the same. Therefore, the applicants are properly before the Commission.

The respondent is a public utility and is obligated to furnish water for domestic purposes to all the inhabitants of and owners of property in the territory covered by its certificate, including blocks 1 and 2, Hillsborough, who desire the service it renders and who comply with the reasonable rules and regulations of respondent.

The applicants are entitled to the relief prayed for in their application.

ORDER

It is *ordered* by the Commission: That the applicants named in the caption hereof have the right to, and hereby are authorized to, have connections made between their premises and the water mains in the alley in block 2, Hillsborough subdivision, Adams county, Colorado; and the respondent is *ordered* and *directed* to make such connections between the premises of the applicants and the water main located in the alley of said block 2 in said Hillsborough subdivision upon said applicants' complying with the reasonable rules and regulations of the respondent; and the respondent shall thereafter furnish water for domestic purposes to said applicants in accordance with respondent's duties and obligations as a public utility.

That the respondent shall, within ten days from and after application therefor shall be made to it, connect its water system with the premises of other owners or purchasers of property within the territory described in its certificate upon said owners or purchasers' complying with the reasonable rules and regulations of respondent, and shall thereafter furnish water to said premises for domestic purposes.

SECURITIES AND EXCHANGE COMMISSION

Re Northern States Power Company

File No. 68-41, Release No. 6244
November 30, 1945

PETITION *by holding company for rehearing on order permitting declaration of preferred stockholders' committee (regarding solicitation of authorizations) to become effective and request by committee for list of stockholders; rehearing denied, examination of list of stockholders ordered, and company ordered to furnish list to committee.*

Intercorporate relations, § 19.8 — Holding company simplification — Procedure — Hearing on stockholders' solicitation.

1. A holding company involved in simplification proceedings under the Holding Company Act is not denied due process of law in not being permitted to file briefs and present oral argument on the question whether a declaration with respect to solicitation of authorizations for committee representation of stockholders should be permitted to become effective, since in so far as the proceeding relates to this question the holding company is not a necessary party; and in any event due process is not denied where the holding company has been granted leave to be heard to the extent of introducing evidence and cross-examining witnesses and, on a petition for rehearing, has been afforded full opportunity to present its views, p. 110.

Corporations, § 18.1 — Representation of stockholders — Solicitation of authorizations.

2. Solicitation of authorizations by a committee of stockholders, in simplification proceedings under the Holding Company Act, is for a proper purpose when, as required by the Securities and Exchange Commission, the right to represent stockholders in elections is eliminated and a filed declaration regarding solicitation provides for representation of preferred stockholders in all actions and proceedings relating to the preferred stock in any court or before any agency or body, p. 110.

Corporations, § 18.2 — Examination of list of stockholders — Holding Company Act.

3. A list of stockholders is a "record" within the meaning of § 15(g) of the Holding Company Act, 15 USCA § 79*o*(g), which requires holding companies to submit accounts, cross-accounting procedures, correspondence, memoranda, papers, books, and other records to examination as the Commission deems necessary or appropriate, p. 112.

Corporations, § 18.2 — Examination of list of stockholders — Committee.

4. Examination of a list of preferred stockholders of a holding company by a preferred stockholders' committee for the purpose of solicitation of authorizations, in simplification proceedings under the Holding Company Act, is appropriate in the public interest, p. 112.

Corporations, § 18.2 — List of stockholders — Duty to furnish to committee.

5. A holding company involved in simplification proceedings under the Holding Company Act may appropriately be required to furnish to a committee representing preferred stockholders, for its possession and use, a complete and up-to-date list of preferred stockholders, although it would not be appropriate to require the company to mail the committee's material upon the payment of the expenses thereof, p. 113.

Corporations, § 5 — Powers of Commission — Furnishing list of stockholders.

6. The Securities and Exchange Commission has power to order a holding company, in simplification proceedings under the Holding Company Act, to furnish a list of stockholders to a committee seeking to represent stockholders respecting a plan of compliance with § 11 of the Holding Company Act, 15 USCA § 79k; the Commission has power to see to it that any security holder is provided with a stockholders list—not merely for inspection but for actual possession, p. 113.

APPEARANCES: G. W. Townsend for Preferred Stockholders' Committee, 6 per cent and 7 per cent preferred stock, Northern States Power Company (Delaware); A. Louis Flynn and A. William Groth for Northern States Power Company (Delaware); G. Aaron Youngquist for Northern States Power Company (Minnesota); B. S. Basson for certain Class A stockholders; John W. Christensen and William L. Fox for the Public Utilities Division of the Commission.

By the COMMISSION: H. M. Foster, chairman, and V. E. Mikkelson, secretary-treasurer, of a committee representing certain holders of the 6 per cent and 7 per cent preferred stock of Northern States Power Company (Delaware),[1] a registered holding company, have filed a declaration, petition, and application pursuant to Rule U-62 under the Public Utility Holding Company Act of 1935 (the Act). The filing relates to a proposed solicitation of authorizations for further representation of the 6 per cent and 7 per cent preferred stockholders of Delaware in all actions, proceedings, and elections relating to such preferred stock in any court or before any agency or body. It is requested also that the Commission issue an order requiring Delaware to furnish a list of its preferred stockholders, or to make such a list available to the committee for use in connection with its proposed solicitation.

A hearing was held, after appropriate notice, at which Delaware and its subsidiary, Northern States Power Company (Minnesota)[2] participated. Thereafter the Commission issued a notice and order[3] (a) permitting the amended declaration of the committee to become effective in so far as it related to the solicitation of authorizations if the form of authorization in the soliciting material were amended to eliminate therefrom the provision for authorization with respect to elections, and (b) ordering that oral argument be held and permitting the filing of briefs on the question whether we should require Delaware to make available to the committee a list of its

[1] Hereinafter referred to as Delaware.
[2] Hereinafter referred to as Minnesota.
[3] Holding Company Act Release No. 6170, Oct. 29, 1945.

preferred stockholders.[4] Subsequently Delaware and Minnesota filed a petition for rehearing with respect to that part of the order permitting the committee's declaration to become effective if the stated condition were met and oral argument on this petition was heard together with the argument with respect to the stockholders list.

1. *The Background of the Declaration.*

The committee was formed in June, 1944, for the purpose of opposing the amended plan for the dissolution of Delaware which had been filed with us pursuant to § 11(e) of the act, 15 USCA § 79k(e).[5] In July, 1944, the committee filed with us a declaration regarding the solicitation of authorizations to represent the preferred stockholders of Delaware before this Commission and the courts. This declaration, as amended, was permitted to become effective and, pursuant to the authorizations received, the committee appeared and participated in the proceedings on the plan. We issued our findings and opinion with respect to the plan on April 26, 1945,[6] and in our order of October 31, 1945,[7] we approved the plan as amended and directed the Public Utilities Division to make application to the appropriate United States district court on behalf of the Commission, pursuant to § 11(e) of the act, to enforce the provisions of the plan. The primary purpose of the solicitation regarding which the present amended declaration has been filed is to secure authorizations to represent the preferred stockholders of Delaware before the United States district court to which application is made, in opposition to such application for enforcement of the plan approved by us.[8] At present the committee represents about 400 out of approximately 63,000 preferred stockholders of Delaware.

2. *The Petition for Rehearing.*

[1, 2] In their petition for rehearing on the question whether the committee's declaration should be permitted to become effective Delaware and Minnesota have proffered no new evidence but set forth as grounds for their petition a number of objections to our order of October 29, 1945, referred to above, the more important of which will be discussed herein.

Petitioners allege that they have been denied due process of law in not being permitted to file briefs and present oral argument on the question whether the declaration with respect to solicitation of authorizations should be permitted to become effective. In so far as the proceeding related to this question, petitioners were not necessary parties. Since we were not satisfied that the companies had any interests which would be inadequately represented if they did not intervene, petitioners were not permitted to in-

[4] The order noticing the matter for argument mentioned only the issue whether the list should be furnished for inspection. However the relief requested and argued for before us included a request that the company furnish its facilities for addressing the solicitations of the committee to the stockholders or supply it with a copy of a list of stockholders.

[5] Re Northern States Power Co. (Delaware) (File Nos. 54–54, et al.) March 31, 1944.

[6] Re Northern States Power Co. (Delaware) (1945) Holding Company Act Release No. 5745.

[7] Holding Company Act Release No. 6173.

[8] The committee also intends to take "all necessary steps" to secure the election of a new board of directors for Delaware and to represent the preferred stockholders in certain derivative actions.

tervene, but were granted leave to be heard, to the extent of introducing evidence and cross-examining witnesses. The parties to the declaration proceeding waived the filing of briefs and the presentation of oral argument, and we did not grant the request of petitioners for such briefs and argument. We do not think that they have been denied due process. In any event the entertainment of the present petition and the oral argument thereon have afforded them full opportunity to express their views.

Our staff has urged that Delaware and Minnesota have no standing, in the limited proceeding relating to the committee's declaration, to raise any objections as to the propriety of the declaration or of the committee's conduct. We concluded that we would hear the companies' views when we afforded them limited participation, and, because they have appeared and participated we have decided to state our views on the issues they have raised. However, to the extent that the staff is claiming that the companies' views are to be taken only as advisory on this limited issue, we believe the staff's position to be correct.

Delaware has introduced testimony to show that the committee, in connection with its past declaration, solicited representation and made oral statements beyond the scope of its solicitation material. Petitioners allege that a number of these statements were false and misleading and that the conduct of the committee demonstrates that it is not a fit group to solicit stockholders.

The record indicates that past solicitations of stockholders whose names and addresses were known to the committee were in strict accordance with the declaration of the committee and made in a proper manner. However, Delaware had refused a request of the committee to have access to a list of stockholders and committee representatives appeared at public meetings in order to contact stockholders who could not be reached by mail.

The solicitations complained of were made orally at these meetings. We have heard the evidence as to these statements and, while statements were made beyond the scope of the material filed, we do not believe that the remarks, made orally in the heat of argument, were seriously prejudicial. In view of the circumstances, we are not persuaded that the acts complained of are of such a nature as to establish that the committee is not a fit group to be permitted to make further solicitation.

Petitioners allege that the letter to stockholders included in the solicitation material to be distributed pursuant to the present declaration is misleading in that it attempts to create the impression, by a comparison of the par value of the preferred stock of Delaware with the stated capital of the common stock of Minnesota which is to be issued in place thereof, that the plan would result in the diminution of the value of the preferred stock. We cannot agree. The paragraph containing the statement complained of is a brief and accurate description of the provisions of the plan as then constituted and as a whole the letter is unexceptionable.[9] Petitioners also

[9] Subsequently the plan was amended to reduce stated capital of the Minnesota common in order to create a larger reserve to provide for reductions in carrying value of properties.

complain of certain minor misstatements and deficiencies in the declaration which we do not consider of sufficient consequence to warrant reconsideration of our order permitting the declaration to become effective.

Petitioners allege that the provision of our order permitting the committee's declaration to become effective upon the filing of an amendment eliminating from the form of authorization the provision contained therein for authorizations with respect to elections is ambiguous and indefinite. The form of authorization contains but a single provision with reference to elections. We think it clear that it is this provision which is to be eliminated. In so far as the letter to stockholders refers to the intention of the committee to secure the election of a new board of directors for Delaware it is unexceptionable as a statement of the action the committee proposes to take in representing the stockholders.

Finally, petitioners contend that the purpose for which permission to solicit is requested is improper. We have required that the provision in the form of authorization giving the committee the right to represent stockholders in elections be eliminated before the declaration will be permitted to become effective since no notice of any election has been given. In other respects the declaration provides for the solicitation of authorizations to represent the preferred stockholders of Delaware in all actions and proceedings relating to the preferred stock "in any court or before any agency or body." We see nothing improper in the purpose of the solicitation.

The petition states no grounds for a rehearing and we cannot agree with any of the objections therein to the validity of our order. The petition will be denied.

3. *The Right to Examination of a List of Stockholders.*

[3, 4] Section 15(g) of the act, 15 USCA § 79*o*(g), provides in part:

"(g) It shall be the duty of every registered holding company . . . to submit the accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records of such holding company . . . to such examinations, in person or by duly appointed attorney, by the holder of any security of such holding company . . . as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers."

Delaware and Minnesota contend that a list of stockholders is not a "record" within the meaning of this section. We cannot agree. The language, "accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records," is all-inclusive.

The committee seeks to examine a list of the preferred stockholders of Delaware in order that it may solicit authorizations from those stockholders whose names and addresses are unknown to it. The solicitation material has been examined by us and found to be proper. We think that it is clearly in the interest of the preferred stockholders of Delaware that they be apprised of the existence and aims of the committee and that they be afforded the opportunity to be represented by it if they so wish. We

conclude that it is appropriate in the public interest and for the protection of investors to permit the committee to inspect the stockholders list.[10]

[5, 6] As we have noted there are about 63,000 preferred stockholders of Delaware. The committee has pointed out that it does not have the facilities for copying out so large a list without incurring great expense, and it is stated that the company has available to it mechanical means and facilities for cheaply and efficiently addressing its large list of stockholders. Although the committee's petition does not ask for an order requiring the company to use its facilities to mail out the committee's solicitation material, that request was made in the committee's brief and in oral argument before us as an alternative to the request that the committee be furnished a list of the preferred stockholders. While the company management might, in voluntary coöperation with the committee, mail the committee's material upon the payment of the expenses thereof, we do not think it appropriate to impose such a requirement on the company. However, we think it clear from the record that it would be appropriate to require the company to furnish to the committee for its possession and use a complete and up-to-date list of preferred stockholders. We believe that we have the power to grant such relief as a condition of the withholding of our use of our own process to make the list available to the committee.

When the provisions of the act are read together it is clear that, if it is in the public interest or appropriate for the protection of investors to do so, we have the power to see to it that any security holder is provided with a stockholders list—not merely for inspection but for actual possession.

(a) Section 14, 15 USCA § 79n, provides in part:

"Every registered holding company . . . shall file with the Commission such annual, quarterly, and other periodic and special reports, [and] the answers to such specific questions . . . as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers."

If the statutory standards set forth in this section are satisfied we may require any registered holding company to submit to us any information we require—including a list of its stockholders.

(b) Pursuant to § 22(a), 15 US CA § 79v(a), we may make available to the public and furnish "to any person at such reasonable charge and under such reasonable limitations" as we may prescribe, the information contained in any document filed with us. We are not empowered to reveal trade secrets or processes and any person filing the document may make written objection to its disclosure.

If we were specifically called on to exercise our powers under §§ 14 and 22(a) to make available a list of preferred stockholders to the committee on the basis of the set of facts presently before us, we would find the statutory standards completely satisfied.

[10] The committee has indicated that the list maintained by Delaware's transfer agent is more up-to-date than that available at the company's Delaware office. The intention of the Commission herein is to permit inspection of both lists or either list.

We have already decided that, pursuant to §§ 15(g) and 20(a), 15 USCA §§ 79o(g), 79t(a), the company should be required to permit the committee to inspect the stockholders list. The very same considerations of policy underlying that decision would require us to find the statutory standards of §§ 14 and 22(a) fully met. Of course, we do not agree with the contention of the committee that the plan is unfair—in our rôle as advocates before the district court we shall resist whatever contention the committee makes which, in our judgment, is not tenable. Nevertheless, we think it is appropriate in the public interest and for the protection of investors that a security holders' committee seeking to represent a class of securities before this Commission or a court should have the same access to a stockholders list as the management has in its capacity as sponsor of the plan.

We need not, however, resort to our powers under §§ 14 and 22 unless, by the company's failure to act, we are required to do so. We shall require the company to deliver into the possession of the committee an up-to-date list of preferred stockholders as a condition of the withholding of our use of our statutory power to require a filing of the list with us and to furnish a copy of the list to the committee.

Should the company, upon payment of reasonable expenses, accede to the request of the committee to provide it with the possession of an up-to-date list of preferred stockholders, we would have no occasion to resort to the use of our powers under §§ 14 and 22(a).

An appropriate order will issue.

ORDER

H. M. Foster, chairman, and V. E. Mikkelson, secretary-treasurer, of a committee representing certain 6 per cent and 7 per cent preferred stockholders of Northern States Power Company (Delaware), a registered holding company, having filed a declaration and application regarding the solicitation of authorizations for the further representation of 6 per cent and 7 per cent preferred stockholders of said company and requesting the Commission to issue an order requiring Northern States Power Company (Delaware) to furnish a list of preferred stockholders, or to make such a list available to said committee for use in connection with its proposed solicitation;

A public hearing having been held with respect to said declaration and application after appropriate notice; oral argument having been heard with respect to the request for a list of preferred stockholders; Northern States Power Company (Delaware) and its subsidiary, Northern States Power Company (Minnesota), having participated in the proceedings herein;

The Commission, in its order of October 29, 1945, herein, having permitted said declaration of the committee, in so far as it relates to the solicitation of authorizations, to become effective subject to certain conditions stated therein; Northern States Power Company (Delaware) and Northern States Power Company (Minnesota) having filed a petition for rehearing on the issues determined in said order; and

The Commission having this day issued its findings and opinion herein, on the basis thereof;

It is *ordered* that the said petition for rehearing be, and it is hereby, denied; and

It is *further ordered* that Northern States Power Company (Delaware) permit the said committee or its representatives to inspect the most up-to-date list of preferred stockholders of said company in the possession of said company or subject to its control and, at the request of said committee, upon the payment or tender of the expenses of so doing to furnish to the said committee a copy of the said stockholders list.

SECURITIES AND EXCHANGE COMMISSION

Re Texas Utilities Company et al.

File No. 70-1196, Release No. 6373
January 17, 1946

APPLICATION *by holding company for authority to acquire stock of affiliated transportation company which is to be sold at competitive bidding; denied.*

Consolidation, merger, and sale, § 33 — Property acquisition under Holding Company Act.

1. Any property whose disposition would be required under § 11(b)(1) of the Holding Company Act, 15 USCA § 79k(b)(1), may not be acquired under the standards of § 10 of the act, 15 USCA § 79j, p. 117.

Consolidation, merger, and sale, § 33 — Acquisition by holding company — Transportation property — Relationship to electric subsidiary.

2. An application by a subholding company for authority to acquire the stock of an affiliated transportation company operating in a city where an electric subsidiary of the applicant supplies power to the transportation company should be denied where there is no substantial operating relationship between the transportation and electric companies, the companies maintain separate offices in separate buildings, recapture clauses in their franchises do not prevent separate sales of the properties, and the transportation company does not contemplate any difficulty in financing its present or foreseeable future needs, since such acquisition would not be in accord with the standards of §§ 10(b)(3) and 10(c)(1) of the Holding Company Act, 15 USCA § 79j (b)(3), (c)(1), p. 117.

Consolidation, merger, and sale, § 33 — Acquisition by holding company — Effect of potential exemption.

3. The fact that a subholding company may, after its divestment by its parent, qualify for exemption under § 3(a(1) of the Holding Company Act, 15 USCA § 79c(a)(1), does not warrant approval of its application for authority to acquire common stock of an affiliated transportation company operating in the same city as an electric subsidiary of the applicant, where

under present conditions such acquisition does not meet the requirements of § 10 of the Holding Company Act, 15 USCA § 79j, p. 120.

(HEALY and CAFFREY, Commissioners, dissent.)

APPEARANCES: F. G. Coates of Baker, Botts, Andrews and Wharton and A. J. G. Priest, for Texas Utilities Company and American Power & Light Company; A. J. Thuss, for the city of Dallas; Sidney Cashman, for Percival E. Jackson, a stockholder of Electric Power & Light Corporation; Charles F. Dugan of White & Case for the successful purchaser of the common stock of Dallas Railway & Terminal Company; Emanuel J. Freiberg and Robert E. Duffy, for the Public Utilities Division of the Commission.

By the COMMISSION: Texas Utilities Company ("Texas Utilities"), a wholly owned registered holding company subsidiary of American Power & Light Company ("American"),[1] also a registered holding company, seeks authority to qualify as a bidder for the common stock of Dallas Railway & Terminal Company ("Dallas Railway"), a nonutility subsidiary of Electric Power & Light Corporation ("Electric"),[2] which will be offered for sale at competitive bidding in accordance with the procedure set forth in Rule U-50 (b).[3]

In the event Texas Utilities should be qualified as a bidder and should be the successful bidder for the common stock of Dallas Railway, Texas Utilities proposes to issue and sell at private sale its promissory notes, with maturities of not more than nine months, in a sufficient aggregate principal amount to enable it, with the proceeds of such sale, to purchase the common stock of Dallas Railway.

After appropriate notice, public hearings were held with respect to these proposed transactions. The city of Dallas, Texas, intervened as a party to the proceedings and was represented at the hearings by its mayor pro tem, its acting city attorney, and by a representative of its office of supervisor of public utilities. Written objections of a large group of employees of Dallas Railway were filed and made part of the record of action herein. Having examined the record, we make the following findings:

Description of Companies Involved

Texas Utilities is exclusively a holding company. Its subsidiaries, Texas Power & Light Company, Texas Electric Service Company, and Dallas Power & Light Company are engaged in the generation, transmission, distribution, and sale of electric energy in the state of Texas. The operations of these companies were fully described in our opinion of October 25, 1945,[4]

[1] American is a subsidiary of Electric Bond & Share Company, a registered holding company. By order dated August 22, 1942, the Commission ordered American to dissolve. See Re Electric Bond & Share Co. 11 SEC 1146, 46 PUR(NS) 321, aff'd (1944) 141 F2d 606; cert. granted (1945) 325 US 846, 89 L ed 1968, 65 S Ct 1400.

[2] Electric is a subsidiary of Electric Bond & Share Company. Electric, like American, has been ordered to dissolve. See footnote 1.

[3] Re Electric Power & Light Corp. (January 10, 1946) Holding Company Act Release No. 6363.

[4] Re American Power & Light Co. (October 24, 1945). Holding Company Act Release No. 6158.

in which we found that the electric utility properties of these companies constituted an integrated public utility system within the meaning of § 2 (a) (29) (A) of the act, 15 USCA § 79b (a) (29) (A).

Of the system companies, Dallas Power & Light Company ("Dallas Power") is the only one which has any dealings with Dallas Railway.[5] The service area of Dallas Power is confined to the city of Dallas and environs. It supplies substantially all of the electric energy requirements of Dallas Railway at rates and under terms and conditions approved by the regulatory authority of the city of Dallas. Reported gross operating revenues of Dallas Power for the twelve months ended October 31, 1945, were $9,734,505. During this same period power purchased by Dallas Railways amounted to $116,996.

Dallas Railway, a Texas corporation, operating under an indeterminate franchise from the city of Dallas, supplies electric street railway and motor coach service in that city and several adjoining suburban towns and districts. In addition, it operates a terminal station and office building in the city of Dallas, occupying a part of such building and renting out of the remainder. Its gross plant account per books as of October 31, 1945, was stated at $13,728,829 and its net plant was $11,431,680. Reported gross operating revenues for the twelve months ended October 31, 1945, were $6,633,052, of which 55 per cent was derived from street railway service, 42 per cent from motor coach service, and 3 per cent from rentals. The railway property includes 107 miles of equivalent single track and 252 street cars, and the bus property includes 256 motor busses which travel 135 miles of bus routes. During the twelve months ended October 31, 1945, the streetcar system carried 72,216,783 passengers and operated 8,478,390 car miles and the bus system carried 56,913,160 passengers and operated 10,685,686 bus miles.

Securities Sought to Be Acquired by Texas Utilities

[1, 2] As has been noted, Texas Utilities seeks permission to bid for, and, if the successful bidder, to acquire the common stock of Dallas Railway which Electric proposes to sell pursuant to the procedure set forth in our Rule U-50 (b). This requires determination of whether such an acquisition would meet the standards of § 10 (b) (3) and 10 (c) (1) of the act, 15 USCA § 79j (b) (3), § 79j (c) (1).

Section 10 (b) (3) provides we shall approve an acquisition unless we find that such acquisition will unduly complicate the capital structure of the holding company system of the applicant or will be detrimental to the public interest or the interests of investors or consumers or the proper functioning of such holding company system. Section 10 (c) (1) provides, among other things, that we shall not approve an acquisition of securities or of any other interest by a registered holding company unless we can affirmatively find that such acquisition is not detrimental to the carrying out of the provisions of § 11, 15 USCA § 79k. Clearly, any property whose

[5] Except that Texas Power & Light Company leases office space in a terminal station and office building owned by Dallas Railway.

disposition would be required under § 11 (b) (1) may not be acquired under the standards of § 10.

Under § 11 (b) (1), a registered holding company is required to limit its operations to a single integrated public utility system, "and to such other businesses as are reasonably incidental or economically necessary or appropriate to the operations of such integrated public utility system." The last sentence of § 11 (b) (1) provides that "The Commission may permit as reasonably incidental or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems."

In Re The Middle West Corp. (February 16, 1945) Holding Company Act Release No. 5606, we said:

"Whether this last sentence be regarded as setting the framework within which to interpret the standards 'reasonable incidental or economically necessary or appropriate' (see North American Co. v. Securities and Exchange Commission [1943] 47 PUR (NS) 6, 133 F2d 148) or be read as a substitute for those standards (see Engineers Pub. Service Co. v. Securities and Exchange Commission [1943] 78 US App DC 199, 51 PUR (NS) 65, 158 F2d 936) the sentence cannot be torn from its context in the act. The express policy of the act in this respect is to permit retention only when necessary for 'economy of management and operation or the integration and coördination of related operating properties.' "

The record is bare of any facts indicating a substantial operating relationship between Dallas Railway and Dallas Power. Indeed, whatever relationship does exist at present between Dallas Power and Dallas Railway is likely to be rendered almost entirely insignificant by the marked trend towards diminution of street railway service in favor of increased motorbus activity. Since 1917 Dallas Railway and Dallas Power have maintained separate offices in separate buildings, and the two companies have no common employees. While, to a limited extent, there has been joint use of facilities,[6] nevertheless company officials testified that such joint use of facilities would no doubt be continued regardless of whether there was common control of the two companies.

However, applicant and the city of Dallas point to the long historical association between Dallas Railway and Dallas Power and, in this connection, it is urged that in the course of unification of the traction properties in Dallas, Electric Bond and Share Company took over the traction and electric properties under separate franchises which contemplated the continuance of common control of these facilities.[7] In support of such contention we are referred to the provisions

[6] The joint use of facilities is limited to the use of poles and underground ducts. Many of the poles are also used by an unaffiliated telephone company and for city police and fire alarm purposes.

[7] In 1925 Electric Bond and Share Company transferred to Electric its holdings in Dallas Railway and Dallas Power.

of the two franchises which required that initial operations thereunder commence simultaneously. However, there are no other interrelated provisions in the franchises which contain detailed provisions for comprehensive regulation of the operations of Dallas Power and Dallas Railway. It should be noted further that, although such franchises contain recapture clauses in favor of the city of Dallas or its licensee, there is no requirement that the city or its licensee exercise such recapture rights with respect to both street railway and electric properties, nor is there any provision which prevents the sale of either the traction or electric properties to nonaffiliated interests.

Applicant further claims that the transportation properties are incidental to the operation of its electric properties in that the use of power for the railway service in off-peak power periods results in an increase in the efficiency of use of electric generating facilities. The evidence presented in support of this contention is not convincing first because the effect of the railway load on the Texas Utilities system is insignificant and is not even important with relation to Dallas Power and Light Company.[8] Secondly, whatever this effect may be it would likewise be present under independent ownership. The testimony is to the effect that regardless of the ownership of the properties Dallas Railway will remain as a power customer of Dallas Power. In addition there exists no ability to control the use of power to meet transit demands and therefore no ability to increase the efficient use of generating facilities.

The city of Dallas further contends that the application should be approved because of the advisability of keeping the electric and transportation properties under a financially strong common parent. In this connection, the city states that Electric Bond and Share Company and Electric have made substantial investments in Dallas Railway which they probably would not have made had they not owned the electric properties and which would have been extremely difficult for Dallas Railway to obtain from any other source. It is unnecessary for present purposes for us to consider the nature and extent of past investments since the record shows that Dallas Railway does not contemplate any difficulty in financing its present or foreseeable future needs.[9]

We do not believe that the contentions advanced by applicant and the city furnish a basis upon which we can affirmatively find any operational relationship between Dallas Railway and the electric system of Texas Utilities.

It should be noted that the act, as it affects the issues in this case, is the

[8] In this connection it should be noted that if the total street railway load was eliminated from Dallas Power System the load factor of such system would be reduced from 56.6 per cent to 55 per cent. It should also be noted that the total requirements of Dallas Railway represented approximately 5.9 per cent of the total kilowatt hours sold by Dallas Power and the gross revenues received by Dallas Power from Dallas Railway represents less than 2 per cent of the total revenues of Dallas Power.

[9] It should be noted that Dallas Railway recently refunded its outstanding 6 per cent first mortgage bonds with first mortgage serial bonds at an average interest rate of approximately 3¼ per cent. Re Dallas R. & Terminal Co. (May 22, 1944) Holding Company Act Release No. 5054.

result of careful deliberation of the very problems here presented. The declared policy of the act requires that all of its provisions shall be interpreted to meet the problems and eliminate the evils enumerated in § 1 thereof. Congress found that these problems and evils may result.

". . . . when the growth and extension of holding companies bears no relation to the economy of management and operation or the integration and coördination of related operated properties."

[3] We are aware, as the dissenting opinion emphasizes, that American has stipulated that it will divest itself of its interest in Texas Utilities and that Texas Utilities may qualify for exemption under § 3 (a) (1) of the act, 15 USCA § 79c (a) (1), although as to the latter, we have already pointed out various questions that remain to be considered and resolved under the "unless and except" clauses of § 3 (a). [10] The important fact is that Texas Utilities is presently both a registered holding company and a subsidiary of a registered holding company (American) and, in both capacities, its proposed acquisition is subject to the provisions of § 10 of the act. Likewise the indirect acquisition by American is subject to the provisions of § 10. We have seen that the standards of § 10 do not permit a combination of electric properties and transportation properties in a holding company system unless a substantial operational relationship exists between the properties. We think it inconsistent with that policy to permit the combining of unrelated utility and non-utility properties, which otherwise would not be permitted under the act, merely because at some future date the acquiring company may cease to be subject to the provisions of the act. Thus, the fact that we would lack jurisdiction over the acquisition if it were made after Texas Utilities were no longer a subsidiary of American and no longer a registered holding company does not relieve us of the duty of appraising the proposed acquisition under the standards of the act at this time when it is both a registered holding company and a subsidiary of a registered holding company.

Conclusions

As we have indicated, the evidence in the record is not such as would persuade us that there is any significant operational relation between Dallas Railway and Texas Utilities. For the reasons heretofore assigned owner ship by Texas Utilities of the stock of Dallas Railway would contravene the standards of § 11 (b) (1) and we conclude, therefore, that the requirements of § 10 preclude the acquisition by Texas Utilities of the Dallas Railway stock.

Since the application of Texas Utilities must be denied, it is unnecessary for us to consider the problems raised by the proposal of Texas Utilities to finance the acquisition by issuing debt securities.

An appropriate order will issue.

HEALY and CAFFREY, Commissioners, dissenting: We are in accord with the opinion of the majority that the Commission could not permit an acquisition by a registered public utility holding company of properties the

[10] Re American Power & Light Co. *supra*, mimeographed pages 15 and 16.

retention of which would contravene the standards of § 11 (b) (1). However, American Power & Light Company has stipulated that it will divest itself of its interest in Texas Utilities within the present year.[1] Texas Utilities and all of its subsidiaries are Texas corporations which are predominently intrastate in character and carry on their business in the state of Texas, and thus under the provisions of § 3 (a) (1) Texas Utilities is potentially entitled to exemption as a holding company "unless and except in so far as . . . [the Commission] finds the exemption detrimental to the public interest or the interest of investors or consumers."[2] We believe that in these peculiar and unusual circumstances the acquisition would not be detrimental to the carrying out of the provisions of § 11 and that therefore the acquisition may be permitted.

ORDER

Texas Utilities Company ("Texas Utilities"), a registered holding company subsidiary of American Power & Light Company, a registered holding company, having filed an application-declaration seeking authority to qualify as a bidder for the common stock of Dallas Railway and Terminal Company, a nonutility subsidiary of Electric Power & Light Corporation, a registered holding company, which will be offered for sale at competitive bidding in accordance with the procedure set forth in our Rule U-50 (b) and, in connection therewith, to issue and sell at private sale its 9-month promissory notes in a sufficient aggregate principal amount to enable Texas Utilities with the proceeds of such sale to purchase the common stock of Dallas Railway; and

A public hearing having been held on such application-declaration after appropriate notice, and the Commission having examined the record and made and filed its findings and opinion based thereon:

It is *ordered* that the said application-declaration be, and the same hereby is, denied.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION

Re Washington Gas Light Company

Order No. 2977, PUC No. 3204/7, GD No. 2003, Formal Case No. 350
November 28, 1945

APPLICATION *for authority to issue, exchange, and sell shares of cumulative preferred stock; granted.*

Security issues, § 112 — Exemption from competitive bidding — Exchange of preferred stock — Local ownership.

1. A waiver of the requirement of competitive bidding was warranted

[1] See Re American Power & Light Co. (October 24, 1945) Holding Company Act Release No. 6158.

[2] See mimeographed pages 15 and 16 of Release No. 6158.

where $4.25 preferred stock was to be exchanged for outstanding $5 preferred stock and investment dealers were to purchase for resale all shares not exchanged, in view of the fact that approximately 70 per cent of the outstanding stock was held locally (which indicated that it was highly improbable that outside investment dealers would be interested in bidding competitively for an issue of the size contemplated, particularly in view of exchange provisions of the proposed transaction) and in view of the further fact that the price to be received and the underwriting cost compared more than favorably with recent transactions of a similar nature by other companies, p. 122.

Security issues, § 82 — Exchange of preferred stock — Lower dividend rates.

2. Authority should be granted to issue, exchange, and sell $4.25 cumulative preferred stock for the purpose of refinancing outstanding $5 cumulative preferred stock, under a plan for cash payment of the difference between the redemption price of outstanding stock and accrued dividends and the price of the new shares, where the refinancing would have but a slight effect upon present capitalization ratios but would result in a reduction in dividend obligations and would improve coverage for income deductions and preferred dividends, p. 122.

By the COMMISSION:

[1, 2] On November 13, 1945, Washington Gas Light Company (hereinafter referred to as the "Company") filed an application with this Commission for authority to issue, exchange, and sell 40,000 shares of its duly authorized $4.25 cumulative preferred stock, for the purpose of refinancing the outstanding 40,000 shares of its $5 cumulative preferred stock. The Company proposes to offer the $4.25 cumulative preferred stock to the holders of the $5 cumulative preferred stock in exchange for their present holdings on a share for share basis. As a part of the exchange transaction, the Company proposes to pay in cash to each exchanging holder of $5 cumulative preferred stock, the difference between the redemption price of $105 per share of $5 cumulative preferred stock and accrued dividends, and the price at which the Company proposes to issue and sell the new shares of $4.25 cumulative preferred stock, of $104 per share and accrued dividends, for each share exchanged.

The Company further proposes to sell all shares of the new $4.25 cumulative preferred stock not taken up pursuant to the exchange offer, to a group of Washington investment dealers at $104 per share and accrued dividends, and to use the proceeds to redeem all unexchanged shares of $5 cumulative preferred stock at their redemption price of $105 per share plus accrued dividends.

An underwriting contract has been entered into between the Company and a group of Washington investment dealers, under the terms of which the investment dealers will purchase from the Company, for resale to the public, all of the 40,000 shares of $4.25 cumulative preferred stock which are not exchanged for shares of $5 cumulative preferred stock, for which services the Company agrees to pay a commission of $1 per share on the entire 40,000 shares.

The exchange rights of the holders

of the $5 cumulative preferred stock will expire at 12 o'clock noon, Eastern Standard Time, on December 15, 1945.

The Company has moved that the competitive bidding provisions of Commission Order No. 1465 (1935) 12 PUR(NS) 9, be waived with respect to this application.

Pursuant to appropriate notice, a public hearing was held on November 23, 1945.

Effect of Proposed Transactions

The proposed refinancing would have but a slight effect upon the present capitalization ratios. However, it will result in a reduction in the dividend obligations on preferred stock capital by $30,000 a year. Coverage for income deductions and preferred dividends will be improved from 1.73 times to 1.77 times.

Preferred Stock Provisions

By Order No. 2221, dated March 26, 1942, 43 PUR(NS) 435, this Commission approved, to the extent of 42,500 shares, the authorization by the stockholders of 90,000 shares of $4.25 cumulative preferred stock, as contained in Stockholders Resolution of March 10, 1941.

The new $4.25 cumulative preferred stock will rank on a parity with the presently outstanding $4.50 cumulative convertible preferred stock as to dividends and as to liquidation value.

The holders of the new preferred stock will be entitled to one vote per share.

The $4.25 cumulative preferred stock will be redeemable, at the option of the Company, on thirty days' notice at $105 per share plus accrued dividends. The holders of such stock will be entitled to receive $100 per share plus accrued dividends in the event of involuntary liquidation, and to $105 per share plus accrued dividends in the event of voluntary liquidation.

Exemption from Competitive Bidding

In considering the request of the Company that the competitive bidding provisions of Order No. 1465, *supra*, be waived, the Commission has taken into account the peculiar circumstances involved in this particular transaction. The record indicates that approximately 70 per cent of the outstanding $5 cumulative preferred stock is held locally, which indicates that it is highly improbable that outside investment dealers would be interested in bidding competitively for an issue of the size contemplated, particularly in view of the exchange provisions of the proposed transaction. Moreover, the price to be received by the Company and the underwriting cost compare more than favorably with recent transactions of a similar nature by other companies.

In view of the foregoing, the Commission concludes that a waiver of requirement of competitive bidding in the present instance is warranted.

Conclusion

After considering all the facts of record, particularly the annual saving of $30,000 in dividend requirements, with the resultant decrease in cost of preferred stock capital and the improvement in the financial position of the Company, the Commission concludes and finds that the proposed

transaction is in the public interest and should be approved. Therefore,

It is *ordered:*

Section 1. That Washington Gas Light Company be, and it is hereby, authorized to issue, exchange, and sell 40,000 shares of its duly authorized $4.25 cumulative preferred stock, in accordance with the terms and conditions set forth in the application filed by the Company on November 13, 1945, and the purchase contract entered into by and between the Company and certain Washington investment dealers on November 20, 1945.

Section 2. That the motion of the Company that the competitive bidding provisions of Commission Order No. 1465, *supra,* be waived, be, and it is hereby, granted.

Section 3. That within sixty days after the final consummation of the proposed transactions, the Company furnish this Commission a statement setting forth the number of shares exchanged, the number of shares sold, and the commissions, fees, and expenses incident thereto, together with copies of all accounting entries recorded on the books of the Company as a result thereof.

Section 4. That this order take effect immediately.

MICHIGAN PUBLIC SERVICE COMMISSION

Re Michigan Consolidated Gas Company

D-3430
November 29, 1945

INVESTIGATION *of rates of gas utility; deferred maintenance charges disallowed and discount on bills ordered.*

Expenses, § 75 — Deferred maintenance.

1. Amounts charged to income and concurrently credited to deferred maintenance reserve, to provide for testing of gas meters and conditioning of mains, should be disallowed as an item of expense during the current year when during past years a utility company has accumulated a reserve which is sufficient for the present, p. 125.

Rates, § 257 — Discount on bills — Excessive revenues — Disallowance of deferred maintenance reserve.

2. A company which, after disallowance of a current charge to deferred maintenance reserve, was found to have had excessive revenues during the current year was required to allow a discount from the face amount of bills for the last month of the year, p. 125.

Expenses, § 74 — Amortization — Deferred maintenance.

Suggestion by Michigan Commission that expenditures for deferred maintenance which would distort the operating results of a utility company should be amortized over a sufficient period of years, p. 125.

By the COMMISSION:

An Order Directing a Discount

These proceedings began with an order to show cause which was issued by the Commission, and upon its own motion, November 16, 1945. The Michigan Consolidated Gas Company, hereinafterwards referred to as the Company, was served with the order on the 16th day of November, 1945. The hearing under the order was noticed for the 29th day of November, 1945.

Likewise notice of these proceedings was given to all the municipalities within the territory served by the Company. Notices to the municipalities were mailed November 16, 1945.

By the hearing notice the Company was advised that this Commission would investigate all the Company's rates of whatsoever kind and nature, charged as a public utility operating within the state of Michigan, to determine whether or not the public is being required to pay rates which yield an extraordinary profit to the utility and whether or not the utility is charging any unnecessary element of expense against the consuming public.

[1, 2] Hearings in the matter have been held and testimony taken and the Commission has considered such testimony and other material facts of which it is entitled to take notice affecting the operations of the Company, and it has also considered the decision of the Michigan supreme court in the case of Detroit v. Public Service Commission (1944) 308 Mich 706, 54 PUR(NS) 65, 14 NW2d 784. The Commission has also considered the various charges made and to be made by the Company to operating expense during the calendar year 1945, from which it finds that an amount of $264,000 to be credited to a deferred maintenance reserve is a special provision. In this special reserve provision has been made for the testing of 54,000 meters at an estimated expense of $3.60 per meter, which in total amount is the sum of $194,000. Also in the special reserve is an amount of $70,000 for conditioning of mains. It is unquestioned that the Company in setting up this reserve is acting in good faith; however, during the years 1942 and 1943 the Company has accumulated $347,000 in this reserve which, in the opinion of the Commission, is all that need be set aside for the present. We fully appreciate that the actual expenditure for deferred maintenance in the years during which the work may actually be performed may be in an amount sufficient to distort the operating results of the Company for these years. If such should occur, we suggest that such expenditure be amortized over a sufficient period of years to avoid the distortion of operating results.

By disallowing the accumulation of an additional $264,000 to the deferred maintenance reserve during 1945, a reduction of approximately $1,500,000 may be made in the gross revenues of the December, 1945, revenue period.

From information before the Commission it appears that the Company may, by reducing its bills to consumers for the December, 1945, revenue period by 53 per cent, effect a reduction in its gross revenues for the month, which, including the estimated cost of $35,000 for expenses of distribution, will approximate the sum of $1,500,000.

It is therefore *ordered:*

That all such charges as have been made to income and concurrently credited to the deferred maintenance reserve during the year 1945 are disallowed as an item of expense, and that no additional accrual to that reserve shall be made during the remainder of said year;

That the Company render its bills to consumers covering its December, 1945, revenue period in accordance with the rates lawfully established by this Commission, but shall allow a discount of 53 per cent from the face thereof upon all such bills, with the exception of certain bills rendered on a bimonthly basis in the Ann Arbor District. Upon such bimonthly bills rendered during the month of December, 1945, there shall be allowed a discount of 26½ per cent. For those consumers who under such bimonthly billing schedule will receive no bill in December, 1945, there shall be entered in the accounts of the Company a credit to such consumers equivalent to 26½ per cent of the last bimonthly bill rendered.

The Commission reserves unto itself jurisdiction of this matter and the right to make any further order or orders herein as it shall hereinafter deem just, fitting, and proper.

WISCONSIN PUBLIC SERVICE COMMISSION

Edmund Porter

v.

Wisconsin Telephone Company

2-U-2077
November 30, 1945

PROCEEDING *on complaint that telephone company refuses to extend exchange service; dismissed.*

Service, § 445 — Telephone extension from toll cable — Availability of other service.

A telephone company is not required to extend exchange service to a farm located on a highway which is the route of one of its toll cables where the applicant is located beyond its exchange boundary and much farther from the exchange than the nearest subscriber and is being furnished service from the exchange of another company located much closer to the premises.

(BRYAN, Commissioner, concurs in separate opinion)

By the COMMISSION: On July 16, 1945, Edmund Porter, Route No. 1, Sun Prairie, Dane county, informed the Commission that Wisconsin Tel-

ephone Company had refused to extend its Madison exchange service to his farm located in section 14, town of Burke, Dane county. On August 3, 1945 Wisconsin Telephone Company notified the Commission that the complainant's farm is within the normal service area of the Sun Prairie exchange of Commonwealth Telephone Company and that service from said exchange had been installed at the farm intermittently for over four years. Notice of investigation was issued August 20, 1945.

Hearing: October 5, 1945 at Madison before Commissioner W. F. Whitney.

APPEARANCES: In his own behalf: Edmund Porter, Sun Prairie; Wisconsin Telephone Company, by W. E. McGavick, Attorney, L. J. Fitzgerald, Commercial Engineer; Commonwealth Telephone Company, by H. W. Pike, Vice President, H. F. Moran, Commercial Superintendent; of the Commission staff: H. J. O'Leary, Chief, rates and research department; K. J. Jackson, rates and research department.

The evidence shows that the residence on the Porter farm and part of the farm land is located in the southwest portion of section 14, town of Burke, Dane county. The farm land also extends into section 23. The residence is located on United States Highway 151 which is also the route of the Madison-Milwaukee toll cable of the Wisconsin Telephone Company. The nearest subscriber served by Wisconsin Telephone Company on this highway through the cable is located 820 feet southwest of the Porter premises. The present service of Commonwealth Telephone Company is furnished from a pole line extending along a town road in the rear of the premises. The distance from the premises to this road is about 1,284 feet. The premises are approximately 7.5 miles air line from Madison and 3.8 miles air line from Sun Prairie.

There was submitted in evidence an exchange area boundary line map, which has been effective since September 1, 1944, purporting to show the territory in this vicinity that is to be served from Madison and Sun Prairie. The map shows the Porter residence as being 715 feet north of the Madison exchange boundary line.

Porter testified that he has occupied this farm since October 15, 1944, and that prior thereto resided on a farm near Morrisonville. Most of his business connections are in Madison, although his children attend school in Sun Prairie. His mail service is out of Sun Prairie.

The witness for Commonwealth Telephone Company testified that it has facilities available and is ready and willing to render service to Mr. Porter. Wisconsin Telephone Company reiterated its objection to extending its facilities into the territory of another utility.

The record in this case is not sufficient to show that the undertaking of service of Wisconsin Telephone Company includes the service requested by Mr. Porter.

The Commission finds:

That the evidence in this case fails to show that the undertaking of Wisconsin Telephone Company includes service to Edmund Porter at his premises located in section 14 of the town of Burke, Dane county.

It is therefore *ordered:*

That the proceeding herein be and is hereby dismissed.

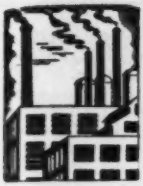
BRYAN, Commissioner, concurring: I concur in the result. However, I am of the opinion that the action should be grounded upon a different finding. This proceeding is one instituted on motion of the Commission under §§ 196.26, 28, and 29, Statutes, and the issuance must be found therein. Whether the Wisconsin Telephone Company should be required to extend its telephone service to Mr. Porter's premises depends upon whether the testimony and evidence warrants a finding that telephone service at that location "is inadequate or cannot be obtained." Since the telephone service of the Commonwealth Telephone Company from its Sun Prairie exchange can be obtained, the sole question remaining is whether that service is inadequate when all of the facts of record relating to the needs of Mr. Porter and the community in which he lives are considered. I am persuaded that such service is not inadequate and that the proceeding should therefore be dismissed.

As pointed out in the Lowell Case, Docket 2038, decided October 4, 1945, 60 PUR(NS) 303, a finding of public convenience and necessity is not technically correct in this proceeding. However, the finding here suggested is obviously closely akin to a finding that public convenience and necessity does not require the extension and is in harmony with the spirit of the Commission's suggested wording of the "Undertaking to Serve" to be filed by a telephone utility, viz:

"Nothing in this undertaking is intended to limit the power of the Public Service Commission to direct the furnishing of service where the same is found to be required to meet the demands of public convenience and nesessity."

See Red Book, Wisconsin Administrative Orders, 1944, p. 345.

In my opinion it is both unwise and unnecessary for the Commission, in a proceeding such as this, to attempt to determine the scope of the undertaking of a telephone utility in a town in which the utility is lawfully engaged in rendering local telephone service. I recognize no limit to such an undertaking within the boundaries of such a town where reasonably adequate service to the general exchange area requires, or may in the future require, that the utility's service be rendered therein. Section 196.50(2), Statutes, places no territorial limit on voluntary extensions within the borders of the town, and the duty to serve must be coextensive with the privilege enjoyed.



Industrial Progress

Selected information about products, supplies, and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Hotpoint Forms Institute To Educate Consumers

To insure selling practices that instruct consumers in the "use values" of the new postwar electric appliances, Edison General Electric Appliance Company has formed Hotpoint Institute, "a home economics activity aimed at consumer education and training in appliance uses for retailers' sales personnel."

The full scope of the new institute will include coöperation with womens' page editors, with magazines, assistance to electric service company home service departments, and testing for product design and development. The widest point of difference between present and prewar functions is the kitchen planning activity, with the increased emphasis on sales training to implement "kitchen planning," according to Ward R. Schafer, vice president in charge of sales.

Asserting that his company had supported a home economics activity for more than thirty years, Mr. Schafer explained that early efforts were largely appliance demonstrations, with a national program of cooking schools and other group demonstrations. Edison General Electric Company's postwar merchandising activities center around "all-electric planned kitchens and laundries," with advantages to consumers depending to a large degree upon proper appliance arrangements to insure correct relationships among work centers.

Noting that "kitchen packages" did not meet ready acceptance before the war, Mr. Schafer said that the housewife became interested only when she saw a promise of less work by "planning appliances into the kitchen." The institute will train store personnel to qualify as kitchen planners.

Improvement of Community Relations Subject of Folder

The social and economic importance of a sound program of community relations in the areas in which a company or its plants are located, is stressed in a folder written by Walter Geist, president of the Allis-Chalmers Manufacturing Company, of Milwaukee, and published by the Electrical Manufacturers Public Information Center.

The folder is one of a series, prepared by leading members of the industry to be published this year on all phases of the public relations problem. The first folder was "The Rôle of Management in Public Relations" by Whipple Jacobs, president of the Belden Manufacturing Company, of Chicago. "Publicity for the Small Company," by James W. Corey, president of The Reliance Electric & Engineering Company, of Cleveland, will be issued this month.

Papers scheduled for future publication include "Government Relations," "The Employee as a Factor in Public Relations," "Stockholder Relations," and others.

The purpose of the program is to present an exchange of ideas among members of the electrical manufacturing industry and others on various phases of public relations problems as viewed from the standpoint of management.

Copies of these folders may be obtained from the Electrical Manufacturers Public Information Center, 155 East 44th street, New York 17, New York.

K-D Lamp Acquires Larger Plant

To provide for an expansion program, K-D Lamp Company, Cincinnati, manufacturers of original and replacement automotive lighting equipment and accessories, has acquired a plant with more than 140,000 square feet of factory space at 1910-1916 Elm st., Cincinnati. K-D Lamp Company is a wholly owned subsidiary of Triumph Industries, Inc., which in turn is owned by Noma Electric Corporation.

National Safety Council Launches Campaign

Americans will be called upon to rally behind the Green Cross for Safety this May, when the National Safety Council launches a nationwide fund-raising campaign aimed at winning general public support of its far-reaching accident prevention work, according to an announcement by Ned H. Dearborn, president of the council.

The drive, marking the first time in its thirty-three-year history that the National Safety Council has gone directly to the public for funds, comes at a time when the public is growing increasingly aware of the accident

(*Continued on page 26*)

(*Continued from page 25*)

problem because of the appalling rise in traffic deaths since the end of the war.

The fund drive is designed to promote two important goals, Mr. Dearborn said. By having the men, women, and children of the country contribute funds, it will make them stockholders in an enterprise working for their own protection. It will make them active participants in a program they accepted only too passively before. And, by making the Green Cross an ever-visible reminder of possible carelessness, it will cut down the number and severity of accidents.

The council thus expects to create such a strong concern for safety in the public at large, and to broaden its financial support to such a degree that vigorous safety campaigns will be carried out on a scale impossible before.

Mr. Dearborn pointed out that up to now the National Safety Council has existed with the financial backing of a small group of industrial concerns and individual contributors. Organized for public safety in 1913, the council and its rapidly multiplying chapters have pressed their fight in all areas of human activity during decades which saw life become increasingly hazardous with the rapid expansion of mechanical processes. The council has advanced programs which have been credited with saving at least 330,000 lives that might have been lost had the accident rate continued at the 1913 level.

The Green Cross for Safety encircled in a green band will serve as the official insignia of the drive.

Harvester Co. Establishes Research Project

ESTABLISHMENT in Chicago of a manufacturing research project devoted to the improvement of manufacturing methods and procedures for the entire line of International Harvester Company products, was announced recently by K. O. Schreiber, vice president in charge of manufacturing. The company's manufacturing research activities will be carried on in a plant located at 5225 Southwestern avenue.

Mr. Schreiber pointed out that the new Harvester establishment will not be a general research laboratory, but rather will be a specialized center for intensive study of improved manufacturing processes; nor will it replace the already substantial amount of manufacturing research going on at individual Harvester plants, rather, he said, it will supplement such plant research.

M. C. Evans, manager of Harvester's manufacturing research and training department, will direct the research activities in the new building. Key men from Harvester's manufacturing plants all over the United States will be called in to take over the direction of various phases of the manufacturing research work.

Eight separate laboratories, all related to specific manufacturing functions, will be operated at the Harvester research center. They are: technical laboratory, including metallurgical, chemical, and physical testing divisions; welding, foundry, paint, packaging and product protection, machining, induction heating, and heat treating laboratories. These respective laboratories will explore, analyze, and test all specific problems of manufacturing methods or procedures that fall within the scope of the particular laboratory concerned.

Exposition Postponed

DUE to the uncertainty of products and delivery schedules of vast numbers of the nation's leading manufacturers the "Products of Tomorrow" exposition scheduled to open at the Chicago Coliseum, April 27th, has been indefinitely postponed, according to an announcement by Marcus W. Hinson, general manager of the exposition.

Elected Sales Vice President

EDWARD E. HELM, general sales manager of The Reliance Electric & Engineering Company, has been elected sales vice president of the company, it was announced recently by J. W. Corey, president, following the regular meeting of the board of directors. All other officers were reelected.

New CO_2 Indicator Circular

THE DAVIS EMERGENCY EPUIPMENT COMPANY, INC., 45 Halleck street, Newark 4, New Jersey, manufacturers of safety and gas alarm equipment, has just issued a circular on a new small portable instrument, known as the Stack-O-Meter for indicating CO_2, stack temperature and draft readings. This circular gives specifications and describes the various features, including safety switch, portability, source of power, and accuracy, together with illustrations which show the panel operating controls as well as the complete instrument.

Ayers Joins Copperweld

D. PAUL AYERS, formerly division engineer of the Kansas Power & Light Company at Topeka, Kansas, has joined the sales engineering staff of Copperweld Steel Company, Glassport, Pennsylvania.

Mr. Ayers has a background of 18 years' practical experience in the design, construction, operation, and maintenance of electrical transmission and distribution systems. Just prior to his affiliation with Copperweld, he supervised the installation of one of the largest substations in the midwest.

Carbide-tipped Drill-bit

THE NEW ENGLAND CARBIDE TOOL COMPANY, 60 Brookline street, Cambridge, Massachusetts, have announced an addition to their reguiar standard tool line—a carbide tipped Cyclone Drill-bit, which is used for drilling holes in concrete, cement, brick, tile,

(*Continued on page 28*)

(*Continued from page 26*)

marble, and other forms of masonry material.

Cyclone Drill-bits are claimed to drill holes 50 per cent faster in masonry materials, and to last 50 to 75 per cent longer than high speed drills. These drills are used in an ordinary rotary electric drill, and for that reason eliminate hammering.

A circular on Cyclone Drill-bits, along with instruction sheets and general data on time required to drill certain size holes and corresponding depths in different masonry materials, may be obtained from the manufacturer.

Pipe Joint Compound In Stick Form

LAKE CHEMICAL COMPANY, 607 North Western avenue, Chicago 12, Illinois, announces Pipetite-Stik, a pipe joint compound in handy, clean, easy-to-use stick form. According to the manufacturer 3 or 4 strokes of stick across the threads are all that are necessary as the compound spreads and fills threads when turned. Encased in a cardboard holder, the stick may be carried around in a pocket or tool kit.

1946 ASHVE Guide Available

THE 24th edition of the Heating Ventilating Air Conditioning Guide published by the American Society of Heating and Ventilating Engineers, 51 Madison avenue, New York, New York, is just off the press. The technical text contains 51 chapters grouped under the general section headings of Principles, Human Reaction to Atmospheric Environment, Heating and Cooling Loads, Combustion and Consumption of Fuels, Heating Systems and Equipment, Air Conditioning, Special Applications, and Installation and Testing Codes.

Survey Shows Increase in Battery-powered Trucks

A 350 per cent increase during the past twenty-one years in the number of battery-powered industrial trucks in use in American industry is revealed in a survey, results of which have been announced by the Electric Industrial Truck Association, Chicago.

The survey for all industry in the United States shows 39,782 such trucks in use at the end of 1944 as compared with 11,350 in 1923. The figures cover all makes of trucks, and are not limited to the products of members of the association who manufacture approximately 90 per cent of such equipment produced in this country.

Following are top industries, listed in the degree with which they use battery-powered trucks in their material-handling systems:

Iron and steel and their products; government; transportation and public utilities; automobile and automobile equipment; machinery (non-electrical); nonferrous metals and their products; electrical machinery; transportation equipment (except automobile); chemicals and allied products; paper and allied products.

New "Lox-in" Glass Filter For Vacuum Coffee-makers

THE first glass filter that locks into the upper bowl of a glass coffee-maker, thereby tightly holding it in place during the brewing process, is now in production by Silex Company of Hartford, Connecticut. It is named the Silex "Lox-in" Glass Filter and will soon have nationwide distribution, according to Frank E. Wolcott, president of the Silex Company.

One great advantage of this new invention, according to Mr. Wolcott, is that it cannot bob up, wobble, or fall out while the coffee is being made, therefore assuring clear, full-flavored coffee. Other advantages claimed for the "Lox-in" glass filter are: It is easy to use; washes in a flash; and, fits Silex and most other glass coffee-makers.

The "Lox-in" filter has a Lifetime Guarantee not only against defects of any kind, but against everything including breakage or user's carelessness.

The Silex Company already has a huge backlog of orders for this new "Lox-in" glass filter which they are filling as rapidly as possible, allocations being made at first to insure equitable distribution throughout the country.

(*Continued on page 30*)

Catalog Describes Cochrane's Multiport Safety Relief Valve

THE story of the Cochrane safety relief valve is effectively told in Cochrane's new publication No. 4150.

Its numerous applications in relief of steam, air, gas, gasoline and oil vapors, water, etc., and adaptableness to other services are cited.

Of special interest is the revised "Sizing Data on Relief Valves" which includes capacity and pressure rise tables unusually convenient to use for size selection.

Copies of the catalog may be obtained from the manufacturer, 17th street and Allegheny avenue, Philadelphia, Pennsylvania.

Morgan To Head Westinghouse South Philadelphia Works

DAVID W. R. MORGAN, manager of the steam division of the Westinghouse Electric Corporation, has been appointed general manager of the entire South Philadelphia works, it has been announced by L. E. Osborne, senior operating vice president. Mr. Morgan's responsibilities will include general supervision of the aviation gas turbine division, and the Attica, New York, plant of the stoker department. He will retain direct management of the steam division.

Reliance to Build $750,000 Plant

THE RELIANCE ELECTRIC & ENGINEERING COMPANY, 1088 Ivanhoe road, Cleveland, will break ground shortly for a new plant in Ashtabula, Ohio.

Work on the new project will be started as quickly as possible, and is expected to take the better part of a year. The new plant will be used for the production of 1 to 15 hp. electric motors and V-S drives.

U. S. Rubber Appointment

THE appointment of Walter F. Spoerl as general sales manager of the mechanical goods division of United States Rubber Company was announced recently by Ernest G. Brown, vice president and general manager of the company's mechanical goods, general products and "Lastex" yarn and rubber thread divisions.

Products of the mechanical goods division include conveyor and transmission belts, hose, rubber mountings, packing, and hundreds of other rubber industrial products.

ASHVE Appointment

THE American Society of Heating and Ventilating Engineers, announces the appointment of Clyde A. McKeeman, as assistant to the president of the society. According to President Alfred J. Offner, New York consulting engineer, Mr. McKeeman will represent the society in securing the interest and participation of industry in the society's research activities.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design, and construction. » » »

(Professional Directory Continued on Next Page)

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LAUNDRY LOAD GETS A *Lift* IN MISSISSIP

Well-planned drive by Mississippi Power & Light wins successful response to Laundry Modernization Plan

Laundry modernization—first in a series of *More Power to America* industrial modernization programs—has "really taken hold" in Mississippi, according to B. M. Davis, System Power Consultant of Mississippi Power and Light Company.

Successful response to this co-operative plan for more effective use of electric power grew out of sound planning, strong teamwork, and aggressive follow-through.

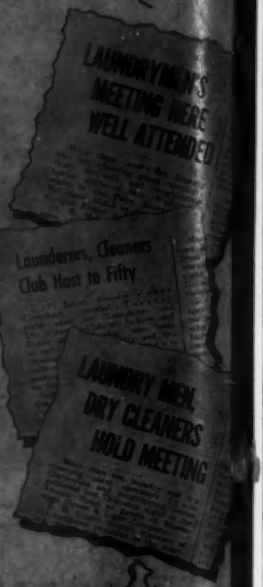
First step was preparation. M. P. & L. became a regional member of the American Institute of Laundering. Its personnel studied the industry, worked with equipment manufacturers, arranged its meetings "according to plan."

Next came the meetings with laundry and dry-cleaning operators—six in all, with an average attendance of 26. Centered around the talking slidefilm "On One Condition," the possibilities of modernization were put on a practical basis. Publicity about the meetings helped the cause along.

A follow-up program is now under way. Folders and booklets have been sent to every laundry. Power consultants are making personal calls. New information will be furnished from time to time.

Already, much good will has been gained, and inquiries concerning further use of electric power have been stimulated. Revenue-producing results are beginning to come in.

G.E. is ready with the basic ammunition that M. P. & L. employed—plans for meetings, salesmen's manuals, and the slidefilm "On One Condition," prepared in co-operation with the American Institute of Laundering. For help in putting the plan into action in your service area, consult your local G-E office. *Apparatus Dept., General Electric Company, Schenectady 5, N. Y.*



This co-operative long-range plan to accelerate further electrification of industry and farming is now moving forward on three fronts:

1. Dozens of utilities are furthering their programs of power sales training and field promotion with the visual aids now available on laundries, electronic heating, and industrial electronics.

2. Machinery manufacturers and power users are co-operating with G.E. in preparing additional motion pictures and handbooks to help your sales engineers promote electrification more effectively.

3. General Electric is exploring new fields for co-operative effort, making plans to publicize the ultimate benefits of further electrification—more productive employment, and more people regularly employed.

If you want more information on "More Power to America," call your local G-E representative.

GENERAL ELECTRIC

201-194E-170